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ABSTRACT

The planning model was designed to enable independent colleges to come to grips with both the concerns and the expectations of affirmative action. It is divided into three parts: (1) a broad statement about the procedures and expectations of equal employment opportunity, presented from the perspective of a hypothetical small independent college; (2) charts, instructions, and worksheets for institutional planning; and (3) appendixes containing references and statistical sources, federal regulations on nondiscrimination, a Federal Government memorandum to college and university presidents, Equal Employment Opportunity Commission guidelines on preemployment inquiries, and comments on the planning model from regional offices of the Department of Health, Education, and Welfare. (MSE)

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Affirmative Action in the Independent College: A Practical Planning Model

by Eugene B. Habecker

Council for the Advancement of Small Colleges CASC

Gary H. Quehl, General Editor

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AFFIRMATIVE ACTION IN THE INDEPENDENT COLLEGE:

A PRACTICAL PLANNING MODEL

by

Eugene B. Habecker

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Suite 320, One Dupont Circle, N. W.
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PREFACE

In December of 1975, the Council for the Advancement of Small Colleges (CASC) began to lay the groundwork for preparation of a document which would enable independent colleges to come to grips with both the concerns and expectations of affirmative action. *Affirmative Action in the Independent College: A Practical Planning Model* reflects CASC's belief that, in spite of bureaucratic problems, equal employment opportunity is a worthy goal for the small independent college, whether or not such an institution is compelled to file an "affirmative action" plan or "equal employment opportunity" plan.

CASC supports the concept of equal employment opportunity for all persons, regardless of race, religion, color, national origin, sex, age, handicap or Vietnam veteran status.[1] The interests of small independent colleges is the concern of CASC and it supports the goals such colleges seek to accomplish. CASC is also aware of the need for limited government involvement in the internal affairs of independent colleges.

This affirmative action planning model is not binding on CASC colleges. Rather, it is the hope that this planning model will serve as a beginning point, a source of guidance and information as each college deals with equal employment opportunity. As this practical guide relates to affirmative action, it should be noted that it reflects the federal context (as compared with state). In view of this, CASC colleges are advised to pursue state laws which may be appropriate.

The planning model is divided into three parts. The *first* part is a broad statement related to the procedures and expectations of equal employment opportunity. It is presented from the perspective of a hypothetical small independent college. The *second* part contains the appropriate charts and the "how to" of equal employment opportunity. The *third* part is comprised of appendices.

The terms "equal employment opportunity," "employment discrimination," and "affirmative action" are distinct. In simple terms *equal employment opportunity* has been defined as "the right of all persons to work and to advance on the basis of merit, ability and potential."[2] As such, it should be considered to be a worthy objective for all employers. *Employment discrimination* is that which results directly or indirectly to prevent the achievement of the goal of equal employment opportunity. *Affirmative action* is the process or means by which an employer seeks to achieve the goal of equal employment opportunity.

Bernice Sandler, Executive Associate and Director of the Project on the Status and Education of Women at the Association of American Colleges, has defined affirmative action this way:

> Broadly speaking, affirmative action consists of efforts aimed to end discrimination and to remedy the effects of past discrimination. It includes a great many activities which are not controversial, such as notifying women's and minority groups about job openings; advertising job openings rather than relying on word-of-mouth notification; developing recruiting procedures aimed at women and minorities as well as other qualified applicants, and so on.[3]

CASC also feels that one of its tasks is to help clarify a major point of misinformation about affirmative action, the idea of requiring the institution to hire lesser qualified women and/or minorities. Most authorities *deny* that preferential treatment is required. As Sandler has concluded:

> Any institution that gives preference in hiring on the basis of sex or race or ethnic origin *is* violating the law. Those who claim that they have been forced to give preference to lesser qualified women and minorities have sadly misunderstood the law and their rights under it.[4]

And in the February, 1975, issue of *Kappan,* the following report is filed:

> The nation's colleges and universities are being warned by the Department of Health, Education and Welfare that it is *illegal* to give preferential hiring treatment to women and minorities in trying to implement affirmative action programs. Peter E. Holmes, director of the Health, Education and Welfare's Office of Civil Rights says that in all cases the most qualified applicant for any job is the one who should be hired. 'There has been widespread misinterpretation of guidelines issued to implement an executive order requiring colleges to take affirmative action to hire and promote women and minorities,' Holmes says.[5]

To ensure the validity of the planning model with appropriate agencies, the manuscript was sent to the 10 regional Offices for Civil Rights, DHEW, for their critiques. Marlaina Kiner, Director of the Region X Office of Civil Rights in Seattle, Washington, replied that "the plan appears to be consistent with federal equal opportunity laws and regulations, including Executive Order 11246 as amended and Revised Order 4 of the Office of Federal Contracts Compliance Program (41C FR60-2)." In addition she stated that "the model format you have developed appears to be an effective adaptation to the setting and purposes of the smaller colleges,whether or not they hold federal contracts covered by the Executive Order requiring an affirmative action plan." (For additional comments, see Appendix IX.)

William H. Thomas, Director of the Office of Civil Rights, Region IV, Atlanta, Georgia, responded in writing also. (See Appendix IX.) However, the other eight regional offices chose to limit their review to plans submitted by the appropriate institutions within their regions.

CASC expresses its appreciation to members of the Affirmative Action Committee: Dr. Eugene B. Habecker, J.D., chairman and Dean of Students, George Fox College; Dr. Martha Shalitta, Professor of Psychology, Eastern College; and Dr. Charles H. Oestreich, Vice President for Academic Affairs, Texas Lutheran College.

A special acknowledgement must be given to Dr. Habecker who authored the planning model. His professional background in law and administration afforded him unique insight and skill in offering this service to small independent colleges.

Gary H. Quehl
President

April, 1977

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EQUAL EMPLOYMENT OPPORTUNITY ACTION PLAN

I. INTRODUCTION

The commitment of the small independent college to nondiscriminatory employment practices, to equal opportunity for all faculty and staff members, and to a strategy for implementing this commitment is outlined for the guidance of all supervisory personnel, both academic and nonacademic, for all employees and for all the community served by the college.

Specifically, the commitment of the college is that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, handicap and whether or not one has been a Vietnam veteran (*i.e., the eight categories*), and that it will take necessary action to ensure that applicants are employed and that they are treated during employment without regard to these factors.

Nondiscrimination requires that discriminatory conditions, intended or unintended, be eliminated. To achieve this, the college must carefully examine, from time to time, all of its employment policies to be sure that they do not discriminate against any persons with regard to the eight categories. The college will also ensure that those persons responsible for matters regarding employment, including all supervisors and department heads, will perform duties in a nondiscriminatory manner.

A policy of equal employment opportunity requires the college to do more than ensure employment neutrality. Rather, a realistic adoption of the goals of equal employment opportunity calls for the college to determine underutilization of women and minorities, to set goals and timetables designed to over-come that underutilization, and to make additional efforts to recruit, employ and promote qualified members of groups not represented, even if that lack of representation cannot be traced to discriminatory actions on the part of the college. As used here, underutilization is defined as having fewer women or minorities in positions than would reasonably be expected based on their availability.

The shortage of minorities and women in faculty positions is often attributed to the shortage of such qualified persons in the disciplines or the inability of the college to compete for the few who are qualified. The college affirms its commitment to finding solutions to these problems, rather than use them as excuses for inaction on its part.

Even though the federal government extends its protection to a few limited groups, e.g., women, it is the policy of the college that nondiscrimination requirements apply to all persons. Nonetheless, the equal employment opportunity requirements of determining underutilization, setting goals and timetables, and taking related action, are designed to further employment opportunities for women and minorities.

In affirming a policy of equal employment opportunity, the college realizes that the concept of equal employment opportunity action does not require that the college employ or promote any persons who are unqualified, nor does it require a systematic program of reverse discrimination. The concept does require, however, that any standards or criteria which have had the effect of excluding women and minorities be eliminated, unless it can be demonstrated that such criteria relate to successful performance in the position involved.

II. EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the policy of the small independent college to provide equal employment opportunity for all employees and applicants for employment, in view of the eight categories. The college asks all employees to commit themselves to the goal of equal employment opportunity.

The college further states that it is the responsibility of every member of the administration and management team to ensure that equal employment opportunity exists and will continue to exist.

The college board of trustees and administration, fully aware of the socio-economic problems of members of minority groups, pledges that the appropriate resources of the college will be available to improve the general employment position of all employees, including women and minority group members. It is further hoped that at the college the employment position of women and minority group members will be improved through the various programs of the college's Equal Employment Opportunity Plan.

The college will continue to cooperate with federal and state agencies to fulfill legal and moral obligations in the area of equal employment opportunity.

III. EQUAL EDUCATIONAL OPPORTUNITY POLICY

The small independent college reaffirms its policy of administering all educational programs, related supporting services and benefits in a manner which does not discriminate against a student or prospective student with regard to the eight categories or other characteristics which cannot lawfully be the basis for provision of such services.

Further, the college commits itself to a program of affirmative action to encourage the applications of minority and women students, and to identify and eliminate the effects of any past discrimination in the provision of educational and related services. The college will establish organization structures and procedures which will assure equal treatment and access to the facilities and educational benefits of the institution to all students as required by law.

IV. NONDISCRIMINATION IN INSTITUTIONAL SERVICES TO THE PUBLIC[6]

(Where Applicable)

The independent college reaffirms its policy of nondiscrimination, on the basis of minority status, sex, or other impermissible grounds, in the provision of all medical and related services provided to members of its community by facilities under control of the college.

Further, the college commits itself to a continuing program to assure that unlawful discrimination does not occur in the services it renders to the public and that those sectors of the public most affected by this policy be kept informed of its content.

V. EQUAL EMPLOYMENT OPPORTUNITY ACTION PLAN

A. Program Administration

1. The special assistant to the president or other person as the president may appoint shall serve as the Equal Employment Opportunity Action Plan Coordinator (EEOAPC).

2. The president, in consultation with the EEOAPC, shall appoint an Action Plan Committee, the purpose of which shall be to 1) act as an advisory board to the EEOAPC; 2) review and evaluate the plan at least once annually; 3) recommend such changes in the plan which it deems appropriate; and 4) serve as the formal grievance committee for grievances arising under such plan (whenever possible). Included among the membership of the committee will be individuals representative of faculty, nonfaculty, students, women, minorities and college administration. When the EEOAP Committee serves as the formal grievance committee, students and other members of the EEOAP Committee shall be excluded as deemed appropriate by the president, unless the exclusion of students and other members would tend to exclude women and minorities.

3. Recommendations concerning the Equal Employment Opportunity Action Plan (EEOAP) will be made to the president by the EEOAPC after consultation with the EEOAP Committee.

4. The final responsibility for the administration of the EEOAP rests with the president of the college. He or she has primary responsibility for filling the office positions listed in *Section I. 2.* and the responsibility to ensure that, at all levels, necessary action as outlined here is taken to carry out the college EEOAP.

B. **Objectives**

The objectives of the college EEOAP are to further develop and maintain truly equal employment opportunity for all personnel and to eliminate as much as is possible underrepresentation in employment because of race, color, religion, national origin or sex. The college additionally commits itself to develop a work force which reflects equitable distribution of minority group members and women at all levels of employment and throughout all departments of the college. The college specifically undertakes a program of equal employment opportunity to achieve the following purposes:

1. Determination of the extent to which minorities and women are underutilized in major categories;

2. Identification and elimination of the specific causes of such underutilization;

3. Identification and elimination of employment practices which have been adverse on minorities, women and others protected by law and those relating to job performance that have not been clearly established;

4. Replacement of such practices by others which are based on merit and valid job qualifications;

5. Development, through special recruitment efforts and other measures, of applicant pools in which qualified minorities and women are represented in proportions sufficient to help reduce their underutilization, where such has occurred;

6. Development, through special recruitment efforts and other measures, of applicant pools in which handicapped persons and Vietnam veterans are represented equitably;

7. Projection of goals and timetables which will estimate the representation of minorities and women which is likely to result from the operation of this affirmative action plan;

8. Estabishment of organizational structures and monitoring systems which will assure effective

operation of the affirmative action program, achievement of its goals, and modification of the plan as appropriate to those ends.

C. **Dissemination of Policy**

Inasmuch as an uncommunicated policy will be of little value, the college will make a determined effort to communicate such policy. Procedures for communication of the equal employment opportunity policy of the college will include the following:

1. Distribute the Equal Employment Opportunity Action Plan to all employees.

2. Develop contracts with public and private agencies involved in equal employment opportunity.

3. Send letters to employment agencies and other agencies involved in equal employment opportunity placement, briefly outlining the equal employment opportunity policy of the college.

4. Include the college equal employment opportunity policy in all supervisory and management manuals.

5. Publicize the policy in the official college publication and in other college and community news media.

6. Conduct special meetings with supervisory personnel at all levels to explain the intent of the policy and individual responsibility for effective implementation. *(See H. Nepotism policy.)*

7. Schedule special meetings with all other nonfaculty employees to discuss the equal employment opportunity policy and explain individual employee responsibilities.

8. Discuss the equal employment opportunity policy thoroughly in both employee orientation and appropriate employee training programs.

D. **Audit of Employment Practices**

The small independent college will review all its employment practices in order to identify and eliminate any practices which may have contributed to underutilization of minorities and women, and which are not necessary to the operation of the institution and do not bear a direct relationship to the jobs for which they are used as screening devices.

Practices to be reviewed, initially and periodically, will include but not be limited to the following:

1. The initial application and interview procedure;

2. the application form and related documents;

3. the content of job descriptions, in terms of their possible adverse effect on minorities or women;

4. all written pre-employment and promotional tests;

5. all job qualifications, including requirements for experience and education;

6. all criteria, such as arrest records, marital status, garnishments and others, which may be used as disqualifying factors for employment;

7. all procedures and programs, such as requirements on prior notice to current supervisors, distribution of training benefits and others, which bear upon opportunities for advancement within the institution.

Such employment practices will be reviewed by the EEOAPC in consultation with the president, according to the provisions of this plan. The results of each such review, including any recommendations for change, will be stated in writing to the appropriate officer of the college.

E. Recruitment

The college recognizes that preferential hiring on the basis of minority status or sex would be unlawful, even as a means of addressing underutilization of minorities and women, except where there has been a prior determination of illegal discrimination.

Accordingly, the college undertakes a vigorous program of recruitment for minority group members and women in all job categories in which they have been underutilized.

In all positions, regardless of whether or not such underutilization currently exists, the institution will pursue a program of open recruitment to avoid the possible discriminatory effects of informal job networks and similar systems.

Procedures for recruitment of employees will include the following specific actions:

1. Identify departments where few or no women or minority group members are employed and make special effort to fill vacancies in these departments with qualified women or minority group members. *(See "Instructions and Worksheets" for procedures which will be used to determine representation and utilization.)*

2. Develop contacts with agencies involved in placing minority group applicants and use where appropriate these agencies in recruiting qualified applicants.

3. Advertise in minority group newspapers and other publications where applicable.

4. Exert extra effort to talk to minority group members and women when recruiting for faculty through personal professional contacts, professional meetings, college recruiting, and so on.

5. The phrase "equal opportunity employer" will be used in recruiting publications, including employment advertising. Ads will be designed to indicate that women will be considered equally with men for jobs, unless sex is a "bona fide occupational qualification."[7]

6. Particularly in the case of academic personnel, effective channels of recruitment include the following:

   a. Advertisements in appropriate professional journals and job registries;

   b. Unsolicited applications or inquiries;

c. Women teaching at predominantly women's colleges, minorities teaching at predominantly minority colleges;

d. Minorities or women professionally engaged in nonacademic positions, such as industry, government, law firms, hospitals;

e. Professional women and minorities working at independent research institutions and libraries;

f. Professional minorities and women who have received significant grants or professional recognition;

g. Women and minorities already at the institution and elsewhere working in research or other capacities not on the academic ladder;

h. Minority and women graduate degree recipients, from the college itself, and from other institutions, who are not presently using their professional training;

i. Women and minorities presently candidates for graduate degrees at the institution and elsewhere who show promise of outstanding achievement;

j. Minorities and women listed in relevant professional files, registries and data banks, including those which have made a conscientious effort to locate women and minority persons.

7. In order to facilitate recruitment, a central file shall be developed and made available to the search committee(s), containing materials, data and example of procedures which may be considered for use to rectify underutilization of women and minority persons.

F. Selection, Promotion and Other Employment Related Practices

The college selection policy recognizes that a widely communicated EEOAP coordinated with intensive recruitment will be inadequate unless followed by appropriate selection and other employment related practices.

Accordingly, procedures for *selection* of employees will include the following:

1. Review current selection criteria to ensure they are nondiscriminatory and are designed to fill vacancies with best qualified personnel without regard to race, color, religion, national origin, sex, age, handicap and veterans. Examples of pre-employment inquiries which may be forms of either overt or covert discrimination include all such items which are listed in *Appendix VIII: Pre-Employment Inquiries and Equal Employment Opportunity Law.*

2. All nonfaculty job openings will be referred to the chief business officer, and all faculty openings will be referred to the dean of the college.

   Their responsibilities include that of ensuring:

   a. that all applicants are uniformly screened so that equal opportunity in employment can be assured; and

   b. that heads of departments involved in the selection process are aware of their respon-

sibility in equal employment opportunity, and that such awareness is reflected in written job descriptions, including criteria, and in selection interviewing.

3. In connection with interviews of all applicants, there shall be included among those doing the interviewing a woman or minority person.

4. Before any applicant for employment is hired, the Equal Employment Opportunity Action Plan Committee will:

   a. review the procedures followed with respect to recruitment for the position in question and the selection of the individual being recommended for employment; and

   b. certify in writing that so far as the committee has been able to determine, the procedures followed with respect to recruitment and selection comply with the provisions of the EEOAP, as well as with its spirit and intent. Those involved in the recruitment and selection process pertaining to a position to be filled should keep the EEOAP Committee currently informed of the procedures being followed.

   c. demonstrate why the candidate selected for the position is the best qualified of the applicants or, in the alternative, show why the candidates not selected are less qualified for the position than the candidate selected.

Procedures for *promotion* of employees will include the following:

   a. Review "promotion from within" policy to ensure personnel are considered for vacancies based on performance and potential without prejudice to race, color, religion, sex and so on. When the pool of promotables is not representative of available women and minorities, the college has the responsibility to 1) expand the pool to include such persons, or 2) show "business necessity" and that there is no alternative criteria which would produce a better result.

   b. Provide counseling and guidance for both promotables and supervisors wherever possible.

Job Classification. The college will review job classification for all staff positions and make sure that all are classified without regard to race, color, religion, national origin, sex, age, handicap and veteran status.

Salary Administration. The college will take whatever steps are necessary to review all employee positions to ensure rates being paid are commensurate with [other comparable] positions held within the institution. The college will begin such review by starting with those positions held by minority groups and female employees.

Training. The college will take whatever steps are necessary to review all employee training needs to ensure that all employees are able to take advantage of training programs for which they may qualify. The college will begin such review by starting with those employees who are women and who are members of a minority group.

G. Records and Reports

The maintenance of records is critical with regard to the appropriate evaluative analysis. The college, accordingly, will take the action which follows.

1. Records and reports will be maintained and prepared in strict compliance with the appropriate federal documents.

2. Currently, the primary responsibility for recruitment and employment is lodged, respectively, with the following officers as indicated:

Officer (others may be included)	*Area of Responsibility (others may be included)*
Chief Business Officer	Nonfaculty
Dean of the College	Faculty, Registrar's Office, Library
Dean of Students	Assistant and Associate Deans, Counseling, Financial Aid to Students, Chaplain, Athletic Department
Director of Development	Development Office

3. Each of these individuals will, on or before January 1 of each year, submit a written report setting forth:

   a. Familiarity with the Equal Employment Opportunity Action Plan;

   b. Assessment of underutilization of women and minorities in the areas for which the reporting individual has primary responsibility;

   c. Goals and timetables for rectifying such underutilization;

   d. An evaluation of the Affirmative Action Program (AAP) as it applies to the reporting individual's area of responsibility;

   e. Suggestions for remedying any noted weaknesses in the AAP.

4. Detailed reports and analysis of the number, salary record, and advancement record of minority group employees and of women employees will be made by the college Equal Employment Opportunity Action Plan Coordinator on an annual basis to determine the progress of the college in its Equal Employment Opportunity Action Plan, its strengths and weaknesses, and the action needed for more effective implementation.

   Specifically these reports will include a:

   a. comparative study of salaries, fringe benefits, and leave and vacation benefits paid to men, women and minority faculty;

   b. comparison of the percent of increase in salaries awarded to men, women and minority faculty for the most recent academic year;

   c. study of salaries, fringe benefits, and vacation benefits paid to men, women and minority staff and professional staff;

   d. comparison of the percent of increase in salaries awarded to men, women and minority staff in professional staff positions.

H. Nepotism Policy

The independent college will not prohibit the employment of spouses or other relatives in the same department or administrative unit, provided that neither spouse or other relative participates in making recommendations or decisions affecting the appointment, retention, tenure, work assignments, promotion, demotion, or salary of the other spouse or relative, and provided that no preferential policy toward spouses or relatives shall be used to deny equal opportunity.

I. Equal Pay/Benefits

The college is committed to the principle and practice of equal pay/benefits for equal work, as required by the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, as amended, and other laws.

In no case will the college pay or give benefits to similarly qualified individuals performing the same work under comparable conditions of job tenure, different wages or salaries on the basis of sex, minority status or any other factor not permitted by law.

To assure that any unjustified differentials which may exist are corrected, the college will take the following actions:

1. The chief business officer under procedures developed in consultation with the EEOAPC will review the pay/benefits of employees in all major job categories.

2. Any significant disparities (.5 persons or greater) found to exist by sex or minority status will be brought to the attention of the responsible department or unit head, who will be requested to provide documented justification for the differentials, consistent with law.

3. In the absence of such documented justification, the college will make salary/benefit adjustments necessary to achieve compliance with the principle of equal pay for equal work. In no case will such compliance be achieved through the reduction of any employee's salary or benefits.

4. Any employee of the college who believes that because of his or her race, color, religion, sex, national origin, age, or handicap, he or she is being provided with pay or benefits less than other similarly qualified persons performing the same work under comparable conditions of job tenure may file a grievance under the college's grievance procedures, in the same manner as any other complaint regarding equal employment opportunity may be filed.

J. Leave Policies

1. All leave policies of the college will be formulated and administered without discrimination on the basis of sex or any other prohibited ground.

2. In the case of any temporary physical disability, including such disabilities resulting from pregnancy and childbirth, all classes of employees will be granted leave on a basis which does not discriminate on prohibited grounds. All accrued sick leave will be credited until exhausted. Thereafter all accrued annual leave will be credited until exhausted. After all accrued sick and annual leaves are exhausted, leave without pay will be granted without discrimination on prohibited grounds. Any employee granted leave under such circumstances will retain all employment rights in his or her current position for at least an appropriate period consistent with current legal interpretations.

3. The college will not maintain or act upon any written or unwritten policy which excludes applicants or employees from employment with the college because of pregnancy, or which requires employees who are pregnant to stop work at a time other than that which is specified by the personal physicians.

4. Pregnancy, miscarriage, childbirth and recovery therefrom will be considered by the college as temporary physical disabilities under the college's leave programs. Leave granted for any temporary physical disability will be granted without discrimination because of sex or any other prohibited ground.

5. Extended leave of absence without pay, such as long-term military leave and childrearing leave, will be granted without discrimination because of sex or any other prohibited ground. Childrearing leave will be granted on the same basis as long-term military leave.

K. **Goals and Timetables**

1. The college will establish, separately for minorities and women, goals and timetables relating to their employment in each major job category *(See "Instructions and Worksheets," Sections I and II)* in which they have been found to be underutilized by the college.

2. Such goals and timetables, projected by methods detailed in the guidelines for implementation of this plan, will be stated as projections of the likely representation of minorities and women which will exist on specified dates in covered positions as a result of the college's efforts to make all aspects of its EEOAP work.

3. Such projection will be based on the utilization analysis, expected turnover in positions covered, and other factors set forth in applicable regulations.

4. The college's goals and timetables will not be developed or administered as inflexible quotas which must be met, nor will they be administered in a manner which discriminates in the hiring, appointment, promotion or granting of tenure to any individual on grounds of race, color, religion, sex or national origin.

5. Goals and timetables will be projected as appropriate for women and racial minorities. Goals and timetables will not be projected and utilization analyses will not be conducted, on the basis of religion, age, handicap or veteran status.

L. **External Relationships**

The college, in order to achieve the goals of equal employment opportunity and equal educational opportunity as spelled out previously, takes the following actions:

1. All contractors who perform contracts with the college will be informed of the college's discrimination policy and will be asked to provide affirmative information with regard to their policy of non-discrimination in employment practices prior to the award or renewal of such contract. If such a showing cannot be made, the college will not further pursue the contract until the contractor is in compliance with the college's policy of nondiscrimination.

2. Nothing in this plan should be interpreted as invalidating any lawful provision or any contract which exists between the college and a union or other duly established bargaining agent of college employees. Conversely, the college will not be party to any collective bargaining agreement, or any provision thereof, which violates equal employment opportunity

laws and regulations to which the college is subject. The appropriate officials of all unions and other bargaining agents with which the college has contracts will be provided copies of the EEOAP and will be advised of the responsibilities of all employees, including union members, under it.

M. Staff Orientation in EEO

1. In addition to receiving copies of this plan and its guidelines for implementation, as provided for in *Section C,* responsible supervisory personnel will be given special orientation sessions regarding the provisions of the plan and of equal employment opportunity law generally. *(See Appendices III, IV, and V.)* Update sessions will be held at least annually. Responsibility for EEO orientation and training sessions will be assigned to the EEOAPC.

2. Special meetings or orientation sessions will be organized under procedures developed by the EEOAPC to inform non-supervisory personnel and students of their rights and obligations under the college's EEOAP. Update sessions will be held at least annually.

N. Grievance Procedures

These grievance procedures are promulgated in the hope that their accessibility, simplicity, speed and high standards of fairness will encourage employees to choose the internal forum over an external one in seeking redress of perceived injustices.

1. *Coverage.* These procedures apply to any grievance which may arise in matters of general personnel administration and matters involving rights provided for under this EEOAP which directly affect the personal interests and well-being of an individual employee.

   Matters relating to the content or general administration of the college's EEOAP may be referred to the EEOAP Committee. Grievances which are covered exclusively under provisions in a valid collective bargaining agreement remain subject to those provisions.

   Grievances which do not directly involve the personal interests and well-being of an individual employee and which are not otherwise covered by these procedures, should be referred to the chief business officer or dean of the college, whichever is appropriate.

2. *Eligibility.* Any employee who believes that he or she has been done an injustice through the action of another employee, a supervisor, a teacher or other person acting for the college may bring an informal grievance under these procedures.

3. *Interpretation of Coverage.* Where a dispute exists as to whether a particular matter is subject to coverage by these grievance procedures, the EEOAP Committee will make an initial recommendation to the president on such matters of coverage. The college president, however, reserves the right to make the final judgment on that question.

   In making that final judgment, the president, just as the EEOAP Committee, will interpret the coverage of these procedures liberally. He or she will deny application of the procedures only where the matter in question clearly concerns issues of broad policy in which the complaining party has no direct interest, where the president has good reason to believe that a grievance has been brought in bad faith or political or similarly inappropriate reasons, or in other circumstances in which use of these procedures would clearly endanger their effectiveness as an instrument for the redress of grievance.

4. *Retaliation.* Any retaliatory action of any kind taken by any employee of the college against any other employee or student of the college as a result of that person's seeking redress under these procedures, cooperating in an investigation, or other participation in any proceeding under these procedures is prohibited and shall be regarded as a separate and distinct grievable matter under these procedures.

Informal Grievance

1. The employee should first discuss his or her grievance with his or her immediate supervisor.

2. If the grievance remains unresolved, he or she may discuss it with his or her department head.

3. If circumstances of the grievance prevent using either or both of the above steps, or if the department head does not resolve the grievance within 15 working days, the employee may discuss the grievance with the appropriate personnel officer, or in matters involving issues of equal employment opportunity, the EEOAPC. On the recommendation and approval of the EEOAPC, the aggrieved person may be advised to proceed directly to formal grievance procedures.

4. If the grievance involves a question of judgment or opinion not covered by the EEOAP, the appropriate high level official and the EEOAPC shall counsel with the employee, the supervisor and the department head to resolve the grievance, if possible.

Formal Grievance

1. If the aggrieved employee has completed his or her initial employment probationary period or if the grievance alleges discrimination, and if his or her grievance has not been resolved after informal appeal, he or she may submit a request for a formal grievance hearing in writing to the EEOAP Committee.

2. Procedure:

   a. File a request for a formal grievance hearing with the EEOAP Committee.

   b. The EEOAPC will either approve or disapprove the request. If the request is disapproved, the EEOAPC shall state the reasons in writing. If approved, he or she will ask the EEOAP Committee to meet within 15 working days or as soon as possible. The EEOAPC shall serve as the chairperson for the EEOAP Committee whenever it acts in its capacity as a formal grievance committee, unless the president directs otherwise. The EEOAPC, however, shall take no part in the decision.

   c. The EEOAP Committee shall hear the grievance together with such witnesses as it deems germane to the grievance and shall forward its recommendations in writing to the EEOAPC within *five* working days of the close of the hearing. The decision as to whether the proceedings will be open or closed shall initially be made by the EEOAP Committee, which shall recommend its decision to the president of the college. As a general rule, the EEOAP Committee proceedings will be open, except for good reasons. In all cases, the college president reserves the right to make the final judgment on that question.

   d. The grievance committee shall make every reasonable effort to reach its findings and

make its recommendations to resolve the matter within 15 working days of the convening of the committee, and to present its report to the EEOAPC for review and appropriate action.

e. Appeal:

1) The decision of the committee may be appealed in writing to the president by the aggrieved employee, the supervisor or the department head within *three* working days after receiving the decision.

2) With regard to informal and formal grievance proceedings, the decision of the president shall be final.

f. Nothing in this directive supersedes or amends grievance procedures set forth by valid contractual agreement.

g. The grievance procedures spelled out above are in no way intended to limit the rights of employees under applicable laws.

O. Effective Date of Plan

The small independent college will use diligence and good faith to effectuate the outlined plan. As a result, the college's Equal Employment Opportunity Action Plan shall take effect as soon as practicable and no later than *July 1, 1978.*

INSTRUCTIONS AND WORKSHEETS

I. WORK FORCE ANALYSIS (WFA)

> Work force analysis is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from the lowest paid to the highest paid *within* each department or other similar organizational unit including departmental or unit supervision.[8]

Since all colleges have completed the filing of form *EEO-6,* it is recommended that where appropriate the EEO-6 categories be used. So that reasonable comparison can be made between Section A (EEO-6) and Section C (EEO-6), please remember that Section A calls for appropriate information from all seven categories by length of contract (9-10 mos.) whereas Section C calls for such category information by a differing length of contract (11-12 mos.).

Upon completion of EEO-6, most colleges will have a complete analysis of their current work force. Since including part-time employees (half-time or less) would tend to provide an inaccurate picture of the college's employment practices (particularly the hiring of women and minorities since many part-time employees tend to be women and minorities; since most part-time employees are not paid salaries/benefits equivalent to full-time employees) such are not included in categories here. Nonetheless, half-time employees will be included in work force analysis if such are paid the equivalent and/or proportionate benefits.

A. Faculty and Other Instructional Positions (FOIP)

Since the August, 1975 memorandum *(See Appendix IX)* calls for the two primary groups in the WFA, from the basic seven categories which are included in EEO-6, two categories will be identified for inclusion here – EEO-6 categories I and II. Even though EEO-6 category I would normally be included in *faculty,* most, if not all, of the persons in such category are considered to be educators by the institutions and hold faculty rank. Such persons would be construed to be *other instructional staff,* as most if not all also teach. Further, most of the persons in the remaining five categories are recruited at the state, local and/or perhaps at the regional level.

Faculty are presented by division rather than by department. Small liberal arts colleges may have many departments with only one or two faculty members. By grouping departments into a division, a more realistic picture of the faculty will be presented. The suggested division and the respective departments follow:

Education: Education, Health Education, Physical Education, Special Education, Early Childhood Education

Language Arts: Speech and Drama, Literature, Languages, English

Fine/Applied Arts: Music, Art

Natural Science: Biology, Chemistry, General Science, Home Economics, Mathematics, Physics, Computer Science

Religion: Bible, Christian Ministries, Philosophy, Religion

Social Science: Business Administration, Economics, Geography, History, Political Science, Psychology, Social Services, Sociology

Persons within each division having tenure are noted with an asterisk. Persons in the division are listed by job title and appropriate salary schedule. This information, by division/department, is listed on *attachment 1*.

B. Non-Instructional Positions (NIP)

Persons in this class appear in EEO-6 categories III through VII. Since the overwhelming majority of such persons are employed on a 12-month contract or its equivalent, persons employed on a nine or 10-month contract or its equivalent are not shown. The relevant labor market for groups in these categories, except as otherwise noted, is essentially a local one. In other words, persons are generally hired for these positions within a 30-mile radius of the institution. The Standard Metropolitan Statistical Area (SMSA) data will be used for analysis purposes where appropriate.

II. AVAILABILITY AND UTILIZATION ANALYSIS (AUTA)

In compliance with government regulations and as set forth in the guidelines for implementation of this plan, the small independent college will conduct a utilization analysis. It will be conducted separately for minority group members and women and will be based on the groupings previously identified.

This analysis will be constructed to determine on both an institutional and divisional/departmental basis, the extent to which minority group members and women have been employed in major job classifications by the college at rates which are consistent with their availability in the relevant labor market.

Estimates of availability will be based on the presence of individuals who are qualified in each area under criteria which are related to job performance in each job category covered by analysis.

A. Combining Job Titles and Departments into Job Group

1. Faculty and Other Instructional Positions

   This can be done using the same charts under *I. A. and B.*

   Faculty listed by divisions with tenure are identified by an asterisk.

2. Non-Instructional Positions

   This can be done using the same charts under *I. A. and B.*

   Staff are listed by EEO-6 categories, which, where appropriate, have been shown as a related and/or separate group.

B. Determining Availability and Underutilization

Up to this point we have primarily been concerned with gathering and collecting data. Collection of data enables each institution to have a realistic appraisal of its employment practices by appropriate categories. This information will be revealing in many instances. The second purpose is to enable realistic utilization comparisons. By utilization we mean comparing the number of persons in the appropriate job market, by race and sex, who would be qualified to work in the college with the number of persons currently employed by the college. This comparison must and will be done for the groups in both FOIP and NIP. An example in both utilization and availability analysis follows.

In the FOIP area, assume that for every position the college requires the doctorate. Then take each of the six divisions (suggested earlier) and do a utilization analysis by sex.

Using data from the National Center for Education Statistics (1971-72 Degrees Conferred), on page 11 there is a breakdown on all institutions by discipline and sex.

	Total	M	W	
Education	7,041	5,381	1,660	*23%*
Fine/Applied Arts	572	428	144	*25%*
Language Arts	No figure given. Use average of institutional percentage:			*16%*
Natural Sciences	9,156	8,086	1,070	
(includes Mathematics	1,128	1,039	89	
Home Economics	104	30	74	
Computer Science	167	155	12	
Physical Science	4,103	3,830	273	
Biology Science)	3,654	3,032	622	*11%*
Religion/Theology	441	420	21	*4%*
Social Sciences	6,862	5,717	1,085	
(includes Psychology	1,881	1,414	467	
Business and Management)	902	882	20	*15%*
Administrative				*16%*
Average				*16%*

For administrators, since most are trained in the fields identified above, the institutional average has been used.

Applying the figures as given above, in Education, 23% must be women. In Fine/Applied Arts, 25% must be women. In Language Arts, 16% (or the average) must be women. In Natural Science,

11% must be women. In Religion/Theology, 4% must be women. In Social Sciences, 15% must be women. For Administrative, 16% (or the average)must be women.

As applied to a given institution, then, the college will determine the appropriate percentage for each division (or if desired, by department). To the extent that the percentage of women utilized in the appropriate grouping is less than the percentage available within the applicable hiring pool, underutilization exists in that group. A statement to that effect must then be noted in the institution's EEOAP under the group(s) where underutilization is observed. To the extent that the increase in the number of persons in a job group necessary to eliminate underutilization is .5 persons or greater, the EEOAP must include goals (and timetables) which are reflective of the percentage of persons available in the work force or hiring pool.

Continuing to use the example given above, assume a given college has eight full-time faculty members in Education, one of whom is a woman. Twenty-three percent (23%) or 1.84 persons would be women. Since one person (12% or .96 person) is female, and since 1.84 - .96 = .88 is greater than .50, a goal must be set to hire an additional woman. Assume further that in the Natural Sciences there are seven full-time faculty members, two of whom are women. Eleven percent (11%) or .77 persons would be women. Since two persons (or 1.96) are already employed, and since the figure of 1.96 persons exceeds .77 by +1.19, no underutilization exists here and accordingly, no goal need be set, other than to continue to hire the best qualified person.

Suppose, however, that a college decides on the goal that 50% of the faculty should hold doctorates, that is to say that 50% can hold masters' degrees. Looking at comparable figures but using masters recipients rather than doctorates the figures change dramatically.

	Total	M	W	
Education	98,280	41,925	56,355	*57%*
Fine/Applied Arts	7,540	4,051	3,489	*46%*
Language Arts	use average			*34%*
Natural Sciences	21,285	15,049	6,236	*29%*
Religion/Theology	2,755	2,110	645	*23%*
Social Sciences	53,273	45,102	8,171	*15%*
Administrative				*34%*
Average				*34%*

The figures show that with the exception of the social sciences, the hiring pool has been dramatically expanded.

Continuing then to use as a model the college that requires only 50% to hold doctorates, it is suggested that the following modifications be made: that only *half* of the persons in each division or department should be used in terms of the doctorate analysis. The other half should be subject to the master's analysis. Continue to use the Education department/division example which has eight full-time faculty, one of whom is a woman. Assume further that five of the men

hold doctorates and that the other two hold masters', as does the woman. Since the ratio of 50:50 is being used (half doctorates/half masters'), divide this department by 2. For the half expected to hold the doctorates, from earlier figures 23% must be women. For the other half, 57% must be women. Applying the percents to the model, 23% of 4 or .92 persons should be female. For the other half, 2.28 persons should be women in the Education department in a college which expects 50% of the faculty to hold doctorates. Since the current person percent is 12% or .96 person, and since 3.20 - .96 = 2.24, there is underutilization by at least 2 persons. Goals, then, need to be set to hire two women at the appropriate level.

To further expand this example, assume that the college decides that it wants 70% of its faculty to hold doctorates. Seventy percent (70%) of 8 is 5.6 persons; 30% of 8 is 2.4 persons. For the 5.6 persons expected to hold doctorates, 23% or 1.28 should be female. For the other half, 57% or 1.36 should be female. Since 1.28 + 1.36 = 2.64, 2.64 should be female. Since the current person percent is .96, and since 2.64 - .96 = 1.68, there is underutilization by at least 1.5 persons (1.68 rounded off to nearest half). As a result, in this situation the college must set as a goal the hiring of an additional 1.5 women.

The same kind of analysis must in like manner be used for Blacks, Spanish, American, American Indians, and Asians. Where underutilization is less than .5, it is suggested that rather than have no goals, that the appropriate percentages be applied to the FOIP as well as to NIP. Again, if after the utilization analysis is completed the resulting percentages are .50 or below and no goal is set, it is recommended that the institution set an aggregate goal for each of the two major groupings. A suggested method is to take the institution's average percentage and apply it to the group as a whole. Using, for example, the institution which has 50:50 ratio (doctorates to masters'), the institutional average for the doctorate pool is 16%, the master's, 34%. .16 x .50 = .08. .34 x .50 = .17. .17 + .08 = .25.

It is suggested then, that 25% of all the persons in the category of Faculty and Other Instructional Staff be women. The college will then adopt this as a goal and develop appropriate timetables. If the institution has a 70:30 ratio (doctorate to master's), the figures would be as follows: .16 x .70 = .11; .34 x .30 = .10; .11 + .10 = .21 or 21% of such persons should be women. The point at which the greatest gain for those women and minorities will be the determining factor as to whether or not the college uses the divisional analysis or the aggregate total analysis.

As stated earlier *(I. B.)*, since the institution generally recruits from within 30 miles of the campus, except where noted, or from the SMSA, it will need to procure the relevant statistics and then conduct the appropriate utilization and availability analysis in the manner specified for the NIP category.

III. GOALS

Where underutilization exists and the increase in the number of persons in a job group necessary to eliminate underutilization is .5 persons or greater, the college's EEOAP must include both ultimate and interim goals. *(See Appendix VII, DHEW, August, 1975 Memorandum, pages 141-143.)*

Ultimate goals are long-range goals which are designed to correct the underutilization by the application of every good faith effort. Such goals must be stated as a *percentage* (equal to the percentage of women or minorities available for work in the relevant job group within the appropriate labor market) and as a *whole number* (representing total minorities and total women necessary to be employed to reach full utilization).

Interim goals are short-term goals (generally stated in three-year periods) which are to be set (by hiring and/or promoting), the measure of the success of such will be the elimination of underutilization. These rates should be the maximum rates that can be achieved through putting forth every good faith effort, and must not be lower than the percentage rates set as representing the percentage availability of women and minorities in the applicable labor market.

For Non-Instructional Positions, annual goals must be established for all job groups where underutilization exists and must not be lower than the available ultimate group goals. These rates should be the maximum rates that can be achieved through every good faith effort, and must not be lower than the percentage rates set as representing the percentage availability of women and minorities in the applicable labor market.

IV. TIMETABLES

For FOIP groupings, timetables which are set beyond six years for reaching full utilization are not required. Institutions must commit themselves to at least an annual review and update of goals and timetables until underutilization is eliminated.

For NIP groups, a specific timetable must be established which projects the minimum feasible time period for eliminating underutilization. *(See Appendix VII. DHEW, August, 1975, Memorandum, pages 144-145.)*

V. SAMPLE WORKSHEETS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Education

DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE
Professor	E	Yes																						
	F	Yes																						
	G	Yes																						
	H	Yes																						
Assoc. Professor	D	Yes																						
	E	Yes																						
	F	Yes																						
Asst. Professor	C	No																						
	D	No																						

SALARY CODE--USE EEO-6

SALARY INTERVAL

A--Below $ 7,500
B—$ 7,500 -
C— 10,000 - 12,999
D— 13,000 - 15,999
E-- 16,000 - 18,999
F— 19,000 - 24,999
G— 25,000 - 29,999
H— 30,000 and Above

CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Language Arts
DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE		TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	* TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	
Professor	E	Yes																								
	F	Yes																								
	G	Yes																								
	H	Yes																								
Assoc. Professor	D	Yes																								
	E	Yes																								
	F	Yes																								
Asst. Professor	C	No																								
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CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Fine and Applied Arts

DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE
Professor	E	Yes																						
	F	Yes																						
	G	Yes																						
	H	Yes																						
Assoc. Professor	D	Yes																						
	E	Yes																						
	F	Yes																						
Asst. Professor	C	No																						
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CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Natural Science
DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE		TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	
Professor	E	Yes																								
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	G	Yes																								
	H	Yes																								
Assoc. Professor	D	Yes																								
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	F	Yes																								
Asst. Professor	C	No																								
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CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Religion

DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE
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	G	Yes																						
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Assoc. Professor	D	Yes																						
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CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

Social Science

DEPARTMENT

JOB TITLES			NUMBER OF EMPLOYEES													TOTAL TENURED EMPLOYEES										
	SALARY CODE	LADDER RANK Yes No	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN			TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
						MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Professor	E	Yes																								
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	G	Yes																								
	H	Yes																								
Assoc. Professor	D	Yes																								
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G-- 25,000 - 29,999
H-- 30,000 and Above

CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

Primary Administrators

DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE
Professor	E	Yes																						
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	G	Yes																						
	H	Yes																						
Assoc. Professor	D	Yes																						
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CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

Professional Non-Faculty
EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL - ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

Secretarial/Clerical
EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL - ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

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WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

Technical/Paraprofessional
EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

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WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

Skilled Crafts
EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

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WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

Service/Maintenance
EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

Education

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

Language Arts

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

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Fine and Applied Arts

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

Natural Science

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

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59

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Religion

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

Social Science

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

Primary Administrators

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

Professional Non-Faculty

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT												AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
				BLACK		HISPANIC		ASIAN		AM. INDIAN							MINORITY		FEMALE		MINORITY	FEMALE
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

Secretarial/Clerical

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT											AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
				BLACK		HISPANIC		ASIAN		AM. INDIAN						MINORITY		FEMALE		MINORITY	FEMALE
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

Technical/Paraprofessional

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT											AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
				BLACK		HISPANIC		ASIAN		AM. INDIAN						MINORITY		FEMALE		MINORITY	FEMALE
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

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GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

Skilled Crafts

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT											AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
				BLACK		HISPANIC		ASIAN		AM. INDIAN						MINORITY		FEMALE		MINORITY	FEMALE
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

Service/Maintenance

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT											AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
				BLACK		HISPANIC		ASIAN		AM. INDIAN						MINORITY		FEMALE		MINORITY	FEMALE
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

75

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APPENDICES

APPENDIX I. REFERENCES

APPENDIX II. SOURCES OF AVAILABILITY STATISTICS

REFERENCES

1. Some colleges have religious expectations of those persons hired. The Office of Federal Contract Compliance, U. S. Department of Labor, has concluded that:

> It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion *if* such school, college, university, or other educational institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted. (*Federal Register,* March 25, 1975). This provision became effective April 24, 1975.

Arguably, if a federal contractor within the above provisions is exempted from the "religious" requirement of equal opportunity, then so too should be that institution which is not a federal contractor.

The question yet remains as to whether Title VII with its non-religious discrimination provision compels non-BFOQ persons to be hired by the religious institution.

> It is the opinion of the General Counsel of the Commission (EEOC) that Section 702, Title VII of the Civil Rights Act of 1964, as amended, does not authorize a complete exemption of religious organizations from the coverage of the Act or of the reporting requirements of the Commission (EEOC). The exemption for religious organizations applies to discrimination [on] the basis of religion. (EEO-6, Appendix II, part o, paragraph 2, August, 1975).

From this, then, it appears that under Title VII, instructions which meet the conditions of the Section 702 exemption section, can practice religious discrimination in employment. For those colleges who do not fit the specifics of Section 702, the religion BFOQ is still available under Title VII. However, there is always the possibility that claiming this exemption might imperil whatever protection such institutions may now have under *Tilton* and *Roemer.*

It appears that for those private religious institutions meeting the requirements both of the above identified OFCC statement and Section 702 of Title VII, such can discriminate legally in terms of requiring employees to be of a particular religious affiliation. Some institutions, therefore, may want to limit their statement of non-discrimination in employment practices to race, color, national origin and sex.

Further, since there are relevant federal laws which prohibit employment discrimination in additional areas, such as age, handicap, and veterans, colleges are advised to add such to the other protected classes of race, color, national origin, sex, and religion. Even though discrimination based on age, handicap, and on being a Vietnam veteran is prohibited, goals and timetables need not be set for these three.

2. *Affirmative Action and Equal Employment,* Volume 1, 1974, p. 4.

3. Bernice Sandler, "The Hand That Rocked The Cradle Has Learned To Rock The Boat," *Toward Affirmative Action*, p. 9 (The publisher of this 1974 document is Jossey-Bass, Inc.).

4. *Ibid.*, pp. 9-10.

5. George Neill's "Washington Report," Phi Delta *Kappan*, Volume LVI, No. 6, pp. 436, 437, February, 1975.

6. Many of the provisions in Part One of this presentation are taken in whole and/or in part from *The College And University Affirmative Action Manual*, pp. 39-74. The *Manual* is available from EEO Services, Inc., Washington, D. C. It was published in 1975.

7. Even though sex can be a BFOQ, it has been held to be such only on very narrow grounds.

8. "Memorandum To College And University Presidents," HEW MEMO., p. 131, August, 1975.

SOURCES OF AVAILABILITY STATISTICS

1. Volume 2, Appendices, Affirmative Action and Equal Employment – A Guidebook for Employees Published by the U. S. Equal Employment Opportunity Commission, Washington, D. C. 20506.

2. The most recent edition of *Earned Degrees Conferred* from the National Center for Education Statistics, U. S. Office of Education. Data by sex at both the master's and doctorate level is given.

3. McCarthy and Wolfle, "Doctorates Granted to Women and Minority Groups Members," *Science*, Vol. 189, September, 1975, pp. 856-859.

4. *Summary Report 1974 – Doctorate Recipients From United States Universities*, June, 1975. Available from the National Academy of Sciences, Washington, D. C.

5. *Minority Groups Among U. S. Doctorate Level Scientists, Engineers, and Scholars*, 1973. Published December, 1974. Available from the National Academy of Sciences, Washington, D. C.

6. *Doctoral Scientists and Engineers in the United States*, 1973 Profits. Published March, 1974. Available from the National Academy of Sciences, Washington, D. C.

7. *A Guide To Sources of Data On Women, and Women Workers for the United States and for Regions, States, and Local Areas*, 1972. Available from the U. S. Department of Labor.

8. "Professional Women's Groups," August, 1975. Available from the American Association of University Women, 2401 Virginia Avenue, N. W., Washington, D. C. 20037. This document contains a list of over 75 professional women's groups (includes names and addresses).

9. *Availability Data In Academic Professions and Related Occupations.* Available from Gail F. Isbell, The University of Colorado, Willard Administrative Center 176, Boulder, Colorado 80302.

10. *Professional Women And Minorities.* Available from Scientific Manpower Commission, 1776 Massachusetts Avenue, N. W., Washington, D. C. 20036.

APPENDIX III. TITLE VI
NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Nondiscrimination in Federally-Assisted PROGRAMS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Regulation under Title VI of the Civil Rights Act of 1964,
as amended through July 5, 1973

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 [1]

Sec.

80.1 Purpose.
80.2 Application of this regulation.
80.3 Discrimination prohibited.
80.4 Assurances required.
80.5 Illustrative applications.
80.6 Compliance information.
80.7 Conduct of investigations.
80.8 Procedure for effecting compliance.
80.9 Hearings.
80.10 Decisions and notices.
80.11 Judicial review.
80.12 Effect on other regulations; forms and instructions.
80.13 Definitions.

APPENDIX A: Federal financial assistance to which these regulations apply.

AUTHORITY: The provisions of this Part 80 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

SOURCE: The provisions of this Part 80 appear at 29 F.R. 16298, Dec. 4, 1964; 29 F.R. 16988, Dec. 11, 1964; 30 F.R. 35, Jan. 5, 1965, unless otherwise noted.

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

(Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17982, July 5, 1973]

§ 80.2 Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d–1, 2000d–3)
[38 FR 17979, July 5, 1973]

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimina-

[1] 38 FR 17979, July 5, 1973.

tion under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs

where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(*a*) Projects under the Public Works Acceleration Act, Public Law 87-658, 42 U.S.C. 2641-2643.

(*b*) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(*c*) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(*d*) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32-34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraphs (a) of this section.

(Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d-1, 2000d-3) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17979, 17982, July 5, 1973]

§ 80.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in inter-

est, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the propetry in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services

or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1. Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d-5) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17980, 17982, July 5, 1973]

§ 80.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In Federally assisted programs for the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e).

(b) In federally-affected area assistance (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(d) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(e) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith. In other construction grants the

assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(f) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(g) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(h) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(i) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17980, 17982, July 5, 1973]

§ 80.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this

part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17981, 17982, July 5, 1973]

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of

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Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d–5) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14556, Oct. 19, 1967; 38 FR 17982, July 5, 1973]

§ 80.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 80.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the

convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 80.10.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.10 Decisions and notices.

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of

a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 80.9(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 80.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 80.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an

expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

(Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d–2) [29 F.R. 16298, Dec. 4, 1964, as amended at 32 F.R. 14555, Oct. 19, 1967]

§ 80.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 45 CFR Part 70; (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (3) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

(b) *Forms and instructions.* The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 80.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.13 Definitions.

As used in this part—

(a) The term "Department" means the Department of Health, Education, and Welfare, and includes each of its operating agencies and other organizational units.

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under § 80.10 (a)–(d).

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construct on, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17982, July 5, 1973]

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1. Assistance other than for State-Administered Continuing Programs

1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445).

2. Construction of facilities for institutions of higher education (20 U.S.C. 701–758).

3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631–647).

4. Construction of educational broadcast facilities (47 U.S.C. 390–399).

5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452).

6. Demonstration residential vocational education schools (20 U.S.C. 1321).

7. Research and related activities in education of handicapped children (20 U.S.C. 1441).

8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331–332(b)).

9. Research in teaching modern foreign languages (20 U.S.C. 512).

10. Training projects for manpower development and training (42 U.S.C. 2601, 2602, 2610a–2610c).

11. Research and training projects in Vocational Education (20 U.S.C. 1281(a), 1282–1284).

12. Allowances to institutions training NDEA graduate fellows (20 U.S.C. 461–465).

13. Grants for training in librarianship (20 U.S.C. 1031–1033).

14. Grants for training personnel for the education of handicapped children (20 U.S.C. 1431).

15. Allowances for institutions training teachers and related educational personnel in elementary and secondary education, or post-secondary vocational education (20 U.S.C. 1111–1118).

16. Recruitment, enrollment, training and assignment of Teacher Corps personnel (20 U.S.C. 1101–1107a).

17. Operation and maintenance of schools in Federally-affected and in major disaster areas (20 U.S.C. 236–241; 241–1; 242–244).

18. Grants or contracts for the operation of training institutes for elementary or secondary school personnel to deal with special educational problems occasioned by desegregation (42 U.S.C. 2000c–3).

19. Grants for in-service training of teachers and other schools personnel and employment of specialists in desegregation problems (42 U.S.C. 2000c–4).

20. Higher education students loan program (Title II, National Defense Education Act, 20 U.S.C. 421–429).

21. Educational Opportunity grants and assistance for State and private programs of low-interest insured loans and State loans to students in institutions of higher education (Title IV, Higher Education Act of 1965, 20 U.S.C. 1061–1087).

22. Grants and contracts for the conduct of Talent Search, Upward Bound, and Special Services Programs (20 U.S.C. 1068).

23. Land-grant college aid (7 U.S.C. 301–308; 321–326; 328–331).

24. Language and area centers (Title VI, National Defense Education Act, 20 U.S.C. 511).

25. American Printing House for the Blind (20 U.S.C. 101–105).

26. Future Farmers of America (36 U.S.C. 271–391) and similar programs.

27. Science clubs (P.L. 85–875, 20 U.S.C. 2, note).

28. Howard University (20 U.S.C. 121–129).

29. Gallaudet College (31 D.C. Code, Ch. 10).

30. Establishment and operation of a model secondary school for the deaf by Gallaudet College (31 D.C. Code 1051–1053; 80 Stat. 1027–1028).

31. Faculty development programs, workshops and institutes (20 U.S.C. 1131–1132).

32. National Technical Institute for the Deaf (20 U.S.C. 681–685).

33. Institutes and other programs for training educational personnel (Parts D, E & F, Title V, Higher Education Act of 1965) (20 U.S.C. 1119–1119c–4).

34. Grants and contracts for research and demonstration projects in librarianship (20 U.S.C. 1034).

35. Acquisition of college library resources (20 U.S.C. 1021–1028).

36. Grants for strengthening developing institutions of higher education (20 U.S.C. 1051–1054); National Fellowships for teaching at developing institutions (20 U.S.C. 1055), and grants to retired professors to teach at developing institutions (20 U.S.C. 1056).

37. College Work-Study Program (42 U.S.C. 2751–2757).

38. Financial assistance for acquisition of higher education equipment, and minor remodeling (20 U.S.C. 1121–1129).

39. Grants for special experimental demonstration projects and teacher training in adult education (20 U.S.C. 1208).

40. Grant programs for advanced and undergraduate international studies (20 U.S.C. 1171–1176; 22 U.S.C. 2452(b)).

41. Experimental projects for developing State leadership or establishment of special services (20 U.S.C. 865).

42. Grants to and arrangements with State educational and other agencies to meet special educational needs of migratory children of migratory agricultural workers (20 U.S.C. 241e(c)).

43. Grants by the Commissioner of Education to local educational agencies for supplementary educational centers and services; guidance, counseling, and testing (20 U.S.C. 841–844; 844b).

44. Resource centers for improvement of education of handicapped children (20 U.S.C. 1421) and centers and services for deaf-blind children (20 U.S.C. 1422).

45. Recruitment of personnel and dissemination of information on education of handicapped (20 U.S.C. 1433).

46. Grants for research and demonstrations relating to physical education or recreation for handicapped children (20 U.S.C. 1442) and training of physical educators and recreation personnel (20 U.S.C. 1434).

47. Dropout prevention projects (20 U.S.C. 887).

48. Bilingual education programs (20 U.S.C. 880b–880b–6).

49. Grants to agencies and organizations for Cuban refugees (22) U.S.C. 2601(b)(4).

50. Grants and contracts for special programs for children with specific learning disabilities including research and related activities, training and operating model centers (20 U.S.C. 1461).

51. Curriculum development in vocational and technical education (20 U.S.C. 1391).

52. Establishment, including construction, and operation of a National Center on Educational Media and Materials for the Handicapped (20 U.S.C. 1453).

53. Grants and contracts for the development and operation of experimental preschool and early education programs for handicapped (20 U.S.C. 1423).

54. Grants to public or private non-profit agencies to carry on the Follow Through Program in kindergarten and elementary schools (42 U.S.C. 2809 (a)(2)).

55. Grants for programs of cooperative education and grants and contracts for training and research in cooperative education (20 U.S.C. 1087a–1087c).

56. Grants and contracts to encourage the sharing of college facilities and resources (network for knowledge) (20 U.S.C. 1133–1133b).

57. Grants, contracts, and fellowships to improve programs preparing persons for public service and to attract students to public service (20 U.S.C. 1134–1134b).

58. Grants for the improvement of graduate programs (20 U.S.C. 1135–1135c).

59. Contracts for expanding and improving law school clinical experience programs (20 U.S.C. 1136–1136b).

60. Exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

61. Grants to reduce borrowing cost for construction of residential schools and dormitories (20 U.S.C. 1323).

62. Project grants and contracts for research and demonstration relating to new or improved health facilities and services (sec. 304, PHS Act, 42 U.S.C. 242b).

63. Grants for construction or modernization of emergency rooms of general hospitals (Title VI, Part C, PHS Act, 42 U.S.C. 291j).

64. Institutional and special projects grants to schools of nursing (sections 805–808, PHS Act, 42 U.S.C. 296d–296g).

65. Grants for construction and initial staffing of facilities for prevention and treatment of alcoholism (sec. 241–2, Community Mental Health Centers Act (42 U.S.C. 2688 f and g).

66. Grants for construction and initial staffing of specialized facilities for the treatment of alcoholics requiring care in such facilities (sec. 243, Community Mental Health Centers Act, 42 U.S.C. 2688h).

67. Special project grants for training programs, evaluation of existing treatment programs, and conduct of significant programs relating to treatment of alcoholics (sec. 246, Community Mental Health Centers Act, 42 U.S.C. 2688j–1).

68. Grants for construction and initial staff of treatment facilities for narcotic addicts (sec. 251, Community Mental Health Centers Act, 42 U.S.C. 2688m).

69. Special project grants for training programs, evaluation of existing treatment programs, and conduct of significant programs relating to treatment of narcotics addicts (sec. 252, Community Mental Health Centers Act, 42 U.S.C. 2688n–1).

70. Grants for consultation services for Community Mental Health Centers, alcoholism prevention and treatment facilities for narcotic addicts, and facilities for mental health of children (sec. 264, Community Mental Health Centers Act, 42 U.S.C. 2688r).

71. Grants for construction and initial staff of facilities for mental health of children (sec. 271, Community Mental Health Centers Act, 42 U.S.C. 2688u).

72. Special project grants for training programs and evaluation of existing treatment program relating to mental health of children (sec. 272, Community Mental Health Centers Act, 42 U.S.C. 2688x).

73. Grants and loans for construction and modernization of medical facilities in the District of Columbia (P.L. 90–457; 82 Stat. 631–3).

74. Teaching facilities for nurse training (secs. 801–804, Public Health Service Act, 42 U.S.C. 296–296c).

75. Teaching facilities for allied health professions personnel (sec. 791, Public Health Service Act, 42 U.S.C. 295h).

76. Mental retardation research facilities (Title VI, Part D, Public Health Service Act, 42 U.S.C. 295–395e).

77. George Washington University Hospital construction (76 Stat. 83, P.L. 87–460, May 31, 1962).

78. Research projects, including conferences, communication activities and primate or other center grants (secs. 301, 303, 304, and 308, Public Health Service Act, 42 U.S.C. 241, 242a, 242b, and 242f).

79. General research support (sec. 301(d), Public Health Service Act, 42 U.S.C. 241).

80. Mental health demonstrations and administrative studies (sec. 303(a)(2), Public Health Service Act, 42 U.S.C. 242a).

81. Migratory workers health services (sec. 310, Public Health Service Act, 42 U.S.C. 242h).

82. Immunization programs (sec. 317, Public Health Service Act, 42 U.S.C. 247b).

83. Health research training projects and fellowship grants (secs. 301, 433, Public Health Service Act, 42 U.S.C. 242, 289c).

84. Categorical (heart, cancer, etc.) grants for training, traineeships or fellowships (secs. 303, 433, etc., Public Health Service Act, 42 U.S.C. 242a, 289c, etc.).

85. Advanced professional nurse traineeships (sec. 821, Public Health Service Act, 42 U.S.C. 297).

86. Department projects under Appalachian Regional Development Act (40 U.S.C. App. A).

87. Grants to institutions for traineeships for professional public health personnel (sec. 306, Public Health Service Act, 42 U.S.C. 242a).

88. Grants for graduate or specialized training in public health (sec. 309, Public Health Service Act, 42 U.S.C. 242g).

89. Health professions school student loan program (Title VII, Part C, Public Health Service Act, 52 U.S.C. 294–294(k)).

90. Grants for provision in schools of public health of training, consultation and technical assistance in the field of public health and in the administration of state or local public health programs (sec. 309(c)), Public Health Service Act, 42 U.S.C. 242(g)(c)).

91. Project grants for training, studies, or demonstrations looking metropolitan area, or other local area plans for health services (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

92. Project grants for training, studies, or demonstrations looking toward the development of improved comprehensive health planning (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

93. Project grants for health services development (sec. 314(e), Public Health Service Act, 42 U.S.C. 246(e)).

94. Institutional and special grants to health professions schools (Title VII, Part E, Public Health Service Act, 42 U.S.C. 295f–295f–4).

95. Improvement grants to centers for allied health professions (sec. 792, Public Health Service Act, 42 U.S.C. 295h–1)

96. Scholarship grants to health professions schools (Title VII, Part P, Public Health Service Act, 42 U.S.C. 295h–1).

97. Scholarship grants to schools of nursing (Title VIII, Part D, Public Health Service Act, 42 U.S.C. 298c–298c–6).

98. Traineeships for advanced training of allied health professions personnel (sec. 793, Public Health Service Act, 42 U.S.C. 295h–2).

99. Contracts to encourage full utilization of nursing educational talent (sec. 868, Public Health Service Act, 42 U.S.C. 298c–7).

100. Grants to community mental health centers for the compensation of professional and technical personnel for the initial operation of new centers or of new services in centers (Community Mental Health Centers Act, Part B, 42 U.S.C. 2688–2688d).

101. Grants for the planning, construction, equipment and operation of multicounty demonstration health projects in the Appalachian region (sec. 202 of Appalachian Regional Development Act, P.L. 89–4, as amended, P.L. 90–103 40 U.S.C. App. 202).

102. Education, research, training, and demonstrations in the fields of heart disease, cancer, stroke and related diseases (secs. 900–110, Public Health Service Act, 42 U.S.C. 299a–j).

103. Assistance to medical libraries (secs. 390–399, Public Health Service Act, 42 U.S.C. 280b–280b–9).

104. Nursing student loans (secs. 822–828, Public Health Service Act, 42 U.S.C. 297a–g).

105. Hawaii leprosy payments (sec. 331, Public Health Service Act, 42 U.S.C. 255).

106. Heart disease laboratories and related facilities for patient care (sec. 412(d), Public Health Service Act, 42 U.S.C. 287a(d)).

107. Grants for construction of hospitals serving Indians (P.L. 85–151, 42 U.S.C. 2005).

108. Indian Sanitation Facilities (P.L. 86–121, 42 U.S.C. 2004a).

109. Research projects relating to maternal and child health services and crippled children's services (42 U.S.C. 712).

110. Maternal and child health special project grants to State agencies and institutions of higher learning (42 U.S.C. 703(2)).

111. Maternity and infant care and family planning services; special project grants to local health agencies and other organizations (42 U.S.C. 708).

112. Special project grants to State agencies and institutions of higher learning for crippled children's services (42 U.S.C. 704(2)).

113. Special project grants for health of school and preschool children (42 U.S.C. 709) and for dental health of children (42 U.S.C. 710).

114. Grants to institutions of higher learning for training personnel for health care and related services for mothers and children (42 U.S.C. 711).

115. Grants and contracts for the conduct of research, experiments, or demonstrations relating to the development, utilization, quality, organization, and financing of services, facilities, and resources of hospitals, long-term care facilities, or other medical facilities (sec. 304, Public Health Service Act, as amended by P.L. 90–174, 42 U.S.C. 242b).

116. Health research facilities (Title VII Part A, Public Health Service Act, 42 U.S.C. 292–292j).

117. Teaching facilities for health professions personnel (Title VII, Part B, Public Health Service Act, 42 U.S.C. 293–293h).

118. Project grants and contracts for research, development, training, and studies in the field of electronic product radiation (Sec. 356, Public Health Service Act, 42 U.S.C. 263d).

119. Project grants and contracts for research, studies, demonstrations, training, and education relating to coal mine health (sec. 501, Federal Coal Mine Health and Safety Act of 1969, Public Law 91–173.).

120. Surplus real and related personal property disposal (40 U.S.C. 484(k)).

121. Supplementary medical insurance benefits for the aged (Title XXIII, Part B Social Security Act, 42 U.S.C. 1395j–1395w).

122. Issuance of rent-free permits for vending stands, credit unions, employee associations, etc. (20 U.S.C. 107–107f; 45 C.F.R. Part 20; sec. 25, 12 U.S.C. 1770).

123. Grants for special vocational rehabilitation projects (29 U.S.C. 34(a)(1)).

124. Experimental, pilot or demonstration projects to promote the objectives of Title I, X, XIV, XVI, or XIX or Part A of Title IV of the Social Security Act (42 U.S.C. 1315).

125. Social Security and welfare cooperative research or demonstration projects (42 U.S.C. 1310).

126. Child welfare research, training, or demonstration projects (42 U.S.C. 626).

127. Training projects (Title VI, Older Americans Act, 42 U.S.C. 3041–3042).

128. Grants for expansion of vocational rehabilitation services (29 U.S.C. 34(a)(2)(A)).

129. Grants for construction of rehabilitation facilities (29 U.S.C. 41a(a)–(e)) and for initial staffing of rehabilitation facilities (29 U.S.C. 41a(f)).

130. Project development grants for rehabilitation facilities (29 U.S.C. 41a(g)(2)).

131. Rehabilitation Facility improvement grants (29 U.S.C. 41b(b)).

132. Agreement for the establishment and operation of a national center for deaf-blind youths and adults (29 U.S.C. 42a).

133. Project grants for services for migratory agricultural workers (29 U.S.C. 42b).

134. Grants for initial staffing of community mental retardation facilities (42 U.S.C. 2678–2678d).

135. Grants for training welfare personnel and for expansion and development of undergraduate and graduate social work programs (42 U.S.C. 906, 908).

136. Research and development projects concerning older Americans (42 U.S.C. 3031–3032).

137. Grants to States for training of nursing home administrators (42 U.S.C. 1396g(e)).

138. Contracts or jointly financed cooperative arrangements with industry (29 U.S.C. 34(a)(2)(B)).

139. Project grants for new careers in rehabilitation (29 U.S.C. 34(a)(2)(C)).

140. Children of low-income families (20 U.S.C. 241a–241m).

141. Grants for training (29 U.S.C. 37(a)(2)).

142. Grants for projects for training services (29 U.S.C. 41b(a)).

143. Grants for comprehensive juvenile delinquency planning (42 U.S.C. 3811).

144. Grants for project planning in juvenile delinquency (42 U.S.C. 3812).

145. Grants for juvenile delinquency rehabilitative services projects (42 U.S.C. 3822, 3842).

146. Grants for juvenile delinquency preventive service projects (42 U.S.C. 3861).

147. Grants for training projects in juvenile delinquency fields (42 U.S.C. 3861).

148. Grants for development of improved techniques and practices in juvenile delinquency services (42 U.S.C. 3871).

149. Grants for technical assistance in juvenile delinquency services (42 U.S.C. 3872).

150. Grants for State technical assistance to local units in juvenile delinquency services (42 U.S.C. 3873).

151. Grants for public service centers projects (42 U.S.C. 2744).

152. Grants to public or private non-profit agencies to carry on the Project Headstart Program (42 U.S.C. 2809(a)(1)).

153. Project grants for new careers for the handicapped (29 U.S.C. 34(a)(2)(D)).

154. Construction, demonstration, and training grants for university-affiliated facilities for persons with developmental disabilities (42 U.S.C. 2661–2666).

Part 2. Continuing Assistance to State Administered Programs

1. Grants to States for public library services and construction, interlibrary cooperation and specialized State library services for certain State institutions and the physically handicapped (20 U.S.C. 351–355).

2. Grants to States for strengthening instruction in academic subjects (20 U.S.C. 441–444).

3. Grants to States for vocational education (20 U.S.C. 1241–1264).

4. Arrangements with State education agencies for training under the Manpower Development and Training Act (42 U.S.C. 2601–2602, 2610a).

5. Grants to States to assist in the elementary and secondary education of children of low-income families (20 U.S.C. 241a–241m).

6. Grants to States to provide for school library resources, textbooks and other instructional materials for pupils and teachers in elementary and secondary schools (20 U.S.C. 821–827).

7. Grants to States to strengthen State departments of education (20 U.S.C. 861–870).

8. Grants to States for community service programs (20 U.S.C. 1001–1011).

9. Grants to States for adult basic education and related research, teacher training and special projects (20 U.S.C. 1201–1211).

10. Grants to State educational agencies for supplementary educational centers and services, and guidance, counseling and testing (20 U.S.C. 841–847).

11. Grants to States for research and training in vocational education (20 U.S.C. 1281(b)).

12. Grants to States for exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

13. Grants to States for residential vocational education schools (20 U.S.C. 1321).

14. Grants to States for consumer and homemaking education (20 U.S.C. 1341).

15. Grants to States for cooperative vocational education program (20 U.S.C. 1351–1355).

16. Grants to States for vocational work-study programs (20 U.S.C. 1371–1374).

17. Grants to States to attract and qualify teachers to meet critical teaching shortages (20 U.S.C. 1108-1110c).

18. Grants to States for education of handicapped children (20 U.S.C. 1411–1414).

19. Grants for administration of State plans and for comprehensive planning to determine construction needs of institutions of higher education (20 U.S.C. 715(b)).

20. Grants to States for comprehensive health planning (sec. 314(a), Public Health Service Act, 42 U.S.C. 246(a)).

21. Grants to States for establishing and maintaining adequate public health services (sec. 314(d), Public Health Service Act, 42 U.S.C. 246(d)).

22. Grants, loans, and loan guarantees with interest subsidies for hospital and medical facilities (Title VI, Public Health Service Act, 42 U.S.C. 291 et seq.).

23. Grants to States for community mental health centers construction (Community Mental Health Centers Act, Part A, 42 U.S.C. 2681–2687).

24. Cost of rehabilitation services (Title II, Social Security Act sec. 222(d); 42 U.S.C. 422(d)).

25. Surplus personal property disposal donations for health and educational purposes through State agencies (40 U.S.C. 484(j)).

26. Grants for State and community programs on aging (Title III, Older Americans Act, 42 U.S.C. 3021–3025).

27. Grants to States for planning, provision of services, and construction and operation of facilities for persons with developmental disabilities (42 U.S.C. 2670–2677c).

28. Grants to States for vocational rehabilitation services (29 U.S.C. 32); for innovation of vocational rehabilitation services (29 U.S.C. 33); and for rehabilitation facilities planning (29 U.S.C. 41a(g)(1)).

29. Designation of State licensing agency for blind operators of vending stands (20 U.S.C. 107–107f).

30. Grants to States for old-age assistance (42 U.S.C. 301 et seq.); aid to families with dependent children (42 U.S.C. 601 et seq.); child-welfare services (42 U.S.C. 620 et seq.); aid to the blind (42 U.S.C. 1201 et seq.); aid to the permanently and totally disabled (42 U.S.C. 1351 et seq.); aid to the aged, blind, or disabled (42 U.S.C. 1381 et seq.); medical assistance (42 U.S.C. 1396 et seq.).

31. Grants to States for maternal and child health and crippled children's services (42 U.S.C. 701–707); for special projects for maternal and infant care (42 U.S.C. 708).

32. Grants to States for juvenile delinquency preventive and rehabilitative services (42 U.S.C. 3841).

[38 FR 17982, July 5, 1973]

APPENDIX IV. TITLE VII

THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

INTRODUCTION

Equal employment opportunity is the law. Mandated by Congress as Title VII—Equal Employment Opportunity of the Civil Rights Act of 1964, the law is designed to achieve equality of employment opportunities and to remove barriers that have operated in the past to favor some groups of employees over others.

To accomplish these goals, Title VII established the Equal Employment Opportunity Commission as its administering agency.

The Equal Employment Opportunity Act of 1972 expands the coverage defined by Title VII and provides the Equal Employment Opportunity Commission with powers to enforce fair employment practice policies.

On the following pages are the texts of: the Equal Opportunity Act of 1972; the rules and regulations pertaining to the administration of that law; and the executive orders which apply the principles set forth in Title VII to federal employees and government contractors and subcontractors.

If you have questions about the law, we invite you to submit them in writing to:

Office of the General Counsel
Equal Employment Opportunity Commission
Washington, D. C. 20506

PRESIDENTIAL MESSAGE

Statement by President Richard M. Nixon Upon Signing into Law the Equal Employment Opportunity Act of 1972 (P.L. 92–261). March 25, 1972

I am gratified to have signed into law, H.R. 1746, the Equal Employment Opportunity Act of 1972.

By strengthening and expanding the Government's powers against discrimination in employment, this legislation is an important step toward true equality on the job front. Where promises have sometimes failed, we may now expect results.

This bill is the result of hard work and constructive debate in

both branches of Congress by Members of both parties. It is an act of Congressional collaboration in the best tradition.

Under this legislation, the Equal Employment Opportunity Commission and the Justice Department will now be able to make substantial advances against employment discrimination.

The most significant aspect of this legislation is a new authority consistently advocated by this Administration since 1969—a provision arming the Equal Employment Opportunity Commission with power to bring lawsuits in the Federal district courts to enforce the rights guaranteed by Title VII of the Civil Rights Act of 1964. Such actions are to be expedited by the courts whenever possible.

Everyone familiar with the operation of Title VII over the past 7 years has realized that the promise of that historic legislation would remain unfulfilled until some additional, broad-based enforcement machinery was created. This bill provides that enforcement capability.

Additionally, the legislation extends the protections of Title VII to millions of American citizens previously excluded from its coverage. The experiences of both the Justice Department and the EEOC under Title VII have demonstrated that considerable discrimination problems have existed in State and local governments, with small employers, and in some educational institutions. Individuals employed in these areas have not heretofore been protected by Title VII. This bill corrects that defect.

Also created by this legislation is the Equal Employment Opportunity Coordinating Council, a new interagency group which will coordinate, monitor, and report on the Government's enforcement drive against all remaining job discrimination.

This will support our determination to take continuing care that we are making the most effective efforts to bring about equal opportunity for all in the crucial area of employment rights.

One of the basic principles of our way of life in America has always been that individuals would be free to pursue the work of their own choice, and to advance in that work, subject only to considerations of their individual qualifications, talents, and energies.

This bill, addressing specific needs in concrete and practical ways, is bound to make a real difference in the lives of great numbers of minority Americans. It thus is another step toward writing our best principles into the day-to-day realities of our economic system.

THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

Title VII of Civil Rights Act of 1964 Showing Changes Made by Public Law 92–261 Approved March 24, 1972

AN ACT To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY[1]

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments, governmental agencies, political subdivisions,* labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has *fifteen* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or *any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code),* or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, *except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972,* persons having fewer than *twenty-five* employees (and their agents) shall not be considered *employers.*

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the

[1] Includes 1972 amendments made by P.L. 92-261 printed in italic.

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) *twenty-five* or more during the first year after the *date of enactment of the Equal Employment Opportunity Act of 1972, or* (B) *fifteen* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, *except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.*

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, *and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's, religious observance or practice without undue hardship on the conduct of the employer's business.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, *educational institution,* or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, *educational institution,* or society of its *activities.*

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, *or applicants for membership* or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, *or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs*, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment *agency, or joint labor-management committee controlling apprenticeship or other training or retraining, in-*

cluding on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment *agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. *Members of the Commission* shall be appointed by the President by and with the advice and consent of the *Senate* for a term of five *years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and *except as provided in subsection (b)*, shall appoint, in accordance with the *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.*

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) *Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.*

(*c*) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(*d*) The Commission shall have an official seal which shall be judicially noticed.

(*e*) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(*f*) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(*g*) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to *intervene* in a civil action brought *under section 706* by an aggrieved party *against a respondent other than a government, governmental agency, or political subdivision.*

(*h*) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(*i*) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) *The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.*

(b) Whenever *a charge is filed by or on behalf of a* person claiming to be aggrieved, or by a member of the Commission, *alleging* that an employer, employment agency, labor *organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* has engaged in an unlawful employment practice, the Commission shall *serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on* such employer, employment agency, labor *organization, or joint labor-management committee* (hereinafter referred to as the "respondent") *within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges* shall not be made public by the Commission. If the Commission *determines* after such investigation that there is *not* reasonable cause to believe that the charge is true, *it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true,* the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such *informal* endeavors may be made public by the *Commission, its officers or employees, or used as evidence in a subsequent proceeding* without the written consent of the *persons concerned.* Any *person* who *makes* public information in violation of this subsection shall be fined not more than $1,000 or imprisoned *for* not more than one *year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) from the date upon which the Commission is authorized to take action with respect to the charge.*

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts

upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(*d*) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective *date* of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(*e*) A charge under *this section* shall be filed within *one hundred and eighty* days after the alleged unlawful employment practice *occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter,* except that in *a* case of an unlawful employment practice with respect to which the person aggrieved has *initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof,* such charge shall be filed by *or on behalf of* the person aggrieved within *three hundred* days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(*f*)(*1*) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (*c*) *or* (*d*), the Commission has been unable to *secure from the respondent a conciliation agreement acceptable to the Commission,* the Commission *may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a*

case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the *Commission*, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action *upon certification* that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (*c*) *or* (*d*) *of this section or further* efforts of the Commission to obtain voluntary compliance.

(*2*) *Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.*

(*3*) *Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.*

(*4*) *It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the*

case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under *this section*, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under *this section* and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a

complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9, of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all

court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by, or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and* utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, *pay by advance or reimbursement* such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) *Every* employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable,

necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and *to* furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, *and, if such application for an exemption is denied,* bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. *If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.*

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of

the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under the section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of *sections 111 and 1114* title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. *Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official*

functions under this Act shall be punished by imprisonment for any term of years or for life.

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of

the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department,

agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SPECIAL PROVISIONS WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

PROVISIONS OF EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 WHICH RELATE TO BUT DO NOT AMEND THE CIVIL RIGHTS ACT OF 1964

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-238 (Comm. on Education and Labor) and No. 92-899 (Comm. of Conference).
SENATE REPORTS: No. 92-415 accompanying S. 2515 (Comm. on Labor and Public Welfare) and No. 92-416 (Comm. on Labor and Public Welfare) and No. 92-681 (Comm. of Conference).
CONGRESSIONAL RECORD:
Vol. 117 (1971): Sept. 15,16, considered and passed House.
Vol. 118 (1972): Jan. 19-21, 24-28, 31, Feb. 1-4, 7-9, 14-18, 21, 22, considered and passed Senate, amended, in lieu of S. 2515.
Mar. 6, Senate agreed to conference report.
Mar. 8, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 13:
Mar. 25, Presidential statement.

APPENDIX V. TITLE IX

NONDISCRIMINATION ON BASIS OF SEX

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

NONDISCRIMINATION ON BASIS OF SEX

Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

1

On June 20, 1974, the Office for Civil Rights of the Department of Health, Education, and Welfare gave notice of proposed rulemaking to the effect that it intended to add Part 86 to the Departmental regulation to effectuate title IX of the Education Amendments of 1972 (20 U.S.C. sections 1681 et seq.), except sections 904 and 906 thereof (20 U.S.C. 1684 and 1686), with regard to Federal financial assistance administered by the Department (39 FR 22228). Title IX provides that "No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with certain exceptions. Title IX is similar to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) except that title IX applies to discrimination based on sex, is limited to education programs and activities, and includes employment. Title IX is also similar to, but independent of, sections 799A and 845 of the Public Health Service Act which, in effect, proscribe discrimination on the basis of sex in admissions to certain health training programs (42 U.S.C. 295h–9 and 42 U.S.C. 298b–2).

2

Interested persons were given until October 15, 1974, in which to submit written comments, suggestions, or objections regarding the proposed regulation. The Department received over 9700 comments, suggestions or objections and, after consideration of all relevant matter presented by interested persons, the regulation as proposed is hereby adopted, subject to changes as reflected herein.

3

EFFECTIVE DATE

This regulation has been signed by the Secretary of Health, Education, and Welfare and approved by the President. It will be transmitted to Congress pursuant to section 431(d)(1) of the General Education Provisions Act, as amended by section 509(a)(2) of the Education Amendments of 1974 (Pub. L. 93–380, 88 Stat. 567). The regulation will become effective on July 21, 1975.

4

SUMMARY OF REGULATION

Subpart A of this regulation (§§ 86.1 through 86.9) includes definitions and provisions concerning: remedial and affirmative actions, self-evaluation, required assurances, dissemination of information policies, and other general matters related to discrimination on the basis of sex. The Subpart also explains the effect of state and local laws and other requirements.

5

Subpart B (§§ 86.11 through 86.17) describes the educational institutions and other entities, whether public or private, which are covered in whole or in part by the regulation. It also includes exemptions as to the admissions practices of certain educational institutions and an exemption as to the membership practices of social fraternities and sororities, the Boy Scouts, Girl Scouts, Camp Fire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth service organizations. This Subpart defines "admissions," and describes certain educational institutions which are eligible to submit transition plans designed to convert their single-sex admissions processes to non-discriminatory processes over a stated period of time not to exceed seven years from the date of enactment of title IX (*i.e.*, by June 24, 1979). The exemptions for the admissions practices of certain educational institutions are set forth in § 901 (a) of title IX as originally passed by Congress in Pub. L. 92–318. The exemption for the membership practices of the aforementioned youth organizations was inserted into title IX by § 3(a) of Pub. L. 93–568, signed by the President on December 31, 1974.

6

Subpart C (§§ 86.21 through 86.23) sets forth the general and particular prohibitions with respect to nondiscrimination based on sex in admissions policies and admission preferences, including requirements concerning recruitment of students. The regulatory requirements regarding treatment of students and employment (Subparts D and E) are applicable to all educational institutions receiving Federal financial assistance, including those whose admissions are exempt under Subpart C.

7

Subpart D (§§ 86.31 through 86.42) sets forth the general rules with respect to prohibited discrimination in educational programs and activities. The specific subject matter covered in Subpart D includes discrimination on the basis of sex in academic research, extracurricular and other offerings, housing, facilities, access to programs and activities, financial and employment assistance to students, health and insurance benefits for students, physical education and instruction, athletics, discrimination based on the marital or parental status of students and portions of classes dealing with sex education. The regulation explicitly does not affect the use of particular textbooks or curricular materials.

8

Subpart E (§§ 86.51 through 86.61) sets forth the general rules with respect to employment in educational programs and activities. The specific subject matters covered are: discrimination on the basis of sex in hiring and employment criteria, recruitment, compensation, job classification and structure, promotions and terminations, fringe benefits, consideration of marital or parental status, leave practices, advertising, and pre-employment inquiries as to marital or parental status. It also includes provisions for exemptions where sex is a bona fide occupational qualification.

9

Subpart F (§ 86.71) sets forth the interim procedures which will govern the implementation of the regulation by incorporating by reference the Department's procedures under title VI of the Civil Rights Act of 1964.

SCOPE OF APPLICATION

10

Section 86.11, in Subpart B, provides that the regulation applies "to each education program or activity which receives or benefits from Federal financial assistance" administered by the Department. Under analogous cases involving constitutional prohibitions against racial discrimination, the courts have held that the education functions of a school district or college include any service, facility, activity or program which it operates or sponsors, including athletics and other extracurricular activities. These precedents have been followed with regard to sex discrimination; *see Brenden v. Independent School District 742*, 477 F. 2d 1292 (8th Cir. 1973).

11

Title IX requires in 20 U.S.C. 1682, that termination or refusal to grant or continue such assistance "shall be limited in its effect to the particular education program or activity or part thereof in which noncompliance has been found." The interpretation of this provision in title IX will be consistent with the interpretation of similar language contained in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Therefore, an education program or activity or part thereof operated by a recipient of Federal financial assistance administered by the Department will be subject to the requirements of this regulation if it receives or benefits from such assistance. This interpretation is consistent with the only case specifically ruling on the language contained in title VI, which holds that Federal funds may be terminated under title VI upon a finding that they "are infected by a discriminatory environment * * *" *Board of Public Instruction of Taylor County, Florida v. Finch*, 414 F. 2d 1068, 1078–79 (5th Cir. 1969).

A more detailed discussion of various sections in each of the Subparts of the title IX regulation is set forth in the following paragraphs. In certain cases, major issues and the reasons for the final language are discussed.

SUBPART A—CHANGES

13

Section 86.1—The statement of purpose is amended by adding the words "whether or not such program or activity is offered or sponsored by an educational institution as defined in this part."

14

Paragraph 86.2(a)—The definition of "title IX" as used in the regulation is amended by adding "except §§ 904 and 906 thereof." The U.S. Code citation has been appropriately amended to reflect this change.

15

Paragraph 86.2(j)—The definition of "local education agency" is amended to include the following parenthetical abbreviation: "L.E.A."

16

Section 86.3—Remedial and affirmative action and self-evaluation. Paragraph (a) of this section is amended to read as follows:

If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

17

Paragraph (b) of this section is amended by adding the sentence "Nothing herein shall be interpreted to alter any affirmative action obligation which a recipient may have under Executive Order 11246."

In addition, paragraphs (c) and (d) of this section have been added. Paragraph (c) requires recipients within a year of the effective date of the regulation to evaluate their policies and practices and the effects thereof in terms of the requirements of the regulation, to modify any of these polices and practices which do not or may not meet the requirements of the regulation, and to take appropriate remedial action to eliminate the effects of any discrimination which resulted or may have resulted from adherence to them. Paragraph (d) requires that the recipient maintain for at least three years from completion of the evaluation made pursuant to paragraph (c) a description of any modifications made and any remedial actions taken pursuant to paragraph (c).

18

Section 86.4(a)—The general description of assurances required is amended to add the following:

An assurance of compliance with this Part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

19

Paragraph 86.6(a)—The paragraph concerning the effect of this regulation on other Federal provisions is amended to add the words "and do not alter" immediately prior to the word "obligations" in the proposed regulation.

20

Section 86.8—The section concerning designation of a responsible employee is amended as follows: The section as it appeared in the proposed regulation is redesignated as paragraph 86.8(a) and is amended by adding, at the end of the section as it appeared in the proposed regulation, the sentence: "The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph." A second paragraph designated paragraph 86.8(b) is added to read:

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this Part.

21

Section 86.9—The section on dissemination of policy has been amended as follows: Subparagraph 86.9(a)(1) is amended by adding the words "and parents of elementary and secondary students" following the word "students," and by adding the words "and all unions or professional organizations holding collective bargaining or professional agreements" before the words "with the recipient."

ANALYSIS

22

Although a number of changes were made in Subpart A, most of these changes may be viewed as clarifications rather than as substantive alterations. One substantive change was made in § 86.3 where two new paragraphs concerning self-evaluation have been added. The Secretary believes that many of the discriminatory policies and practices now adhered to continue largely because the institutions responsible for them are unaware of their existence. Accordingly, the Secretary believes that the requirement that recipients conduct an initial inquiry into their activities will enable them to identify and to eliminate much discrimination without the intrusion of the Federal government. In addition, where a compliance review reveals noncompliance, the Department will be able to take into account in determining necessary corrective action to be taken by a recipient the actions already being taken by the recipient to further equal opportunity and to achieve full compliance with title IX and the regulation pursuant to their self-evaluation.

An additional substantive change was made in § 86.8 where the regulation now requires recipients to establish grievance procedures (§ 86.8(b)). The Secretary believes that the establishment of grievance procedures by recipients will facilitate compliance and prompt correction of complaints with resort to Federal involvement.

The regulation leaves up to the recipient the choice of having one central grievance procedure or of establishing individual procedures on different campuses if that is appropriate.

23

Other than as noted above, the content of Subpart A remains substantively close to that in the proposed rule. § 86.2 is especially important since it provides definitions applicable throughout the regulation. Of particular note is § 86.2(o) which provides that where an educational institution is composed of more than one school, department or college, admission to which is independent of admission to any other component, each such school, department or college is considered as a separate unit for the purposes of determining whether its admissions are covered by the regulation. Thus, if a private institution is composed of an undergraduate and a graduate college, admissions to the undergraduate college are exempt (see discussion under Subpart B below), but admissions to the graduate school are not.

24

Paragraph 86.3(a) requires remedial action to overcome the effects of previous discrimination based on sex which has been found or identified in a Federally assisted education program or activity. Remedial action pursuant to paragraph 86.3(a) is restricted to those areas of a recipient's education program or activity which are not exempt from coverage. Paragraph 86.3(b) permits, but does not require, affirmative efforts to overcome the effects of conditions which have resulted in limited participation in all or part of a recipient's education program or activity by members of either sex. Moreover, the affirmative efforts referred to in paragraph 86.3(b) do not alter any obligations which a recipient may have as a Federal contractor pursuant to Executive Order 11246.

25

Section 86.4 requires each recipient of Federal financial assistance to submit to the Director an assurance that each of its education programs and activities receiving or benefiting from such assistance will be administered in compliance with the regulation. Such an assurance will be considered unsatisfactory if, at any time after it is given, the recipient fails to take any remedial action found necessary to correct discrimination or the effects thereof.

SUBPART B—CHANGE.

26

Section 86.12 is amended as follows: Paragraph 86.12(b) concerning the claiming of an exemption based on religion is amended to read:

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this Part which conflict with a specific tenet of the religious organization.

27

Sections 86.14 through 86.16 are redesignated as §§ 86.15 through 86.17. A new § 86.14 is added dealing with membership practices of social fraternities and sororities, YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls and certain voluntary youth organizations. A new paragraph 86.15(a), reflecting the specific language of subparagraph 901(a)(2) of the Statute, is added specifying that the regulation does not apply to the admissions practices of educational institutions prior to June 24, 1973, which is one year from the date of enactment of title IX.

ANALYSIS

28

Three changes were made in Subpart B of which two might be considered substantive: The procedure for obtaining an exemption from the coverage of title IX because of conflict between the statutory requirements and the religious tenets of a recipient or its controlling organization have been modified and simplified. An educational institution now need only submit a statement by its highest ranking official identifying the provisions of the regulation which conflict with the tenets of the religious organization involved. The most notable substantive change in Subpart B, however, is the addition of a new § 86.14 which essentially incorporates the provisions of the recently enacted "Bayh Amendment" to title IX. The amendment, which is found at § 3 of Pub. L. 93-568, exempts from the requirements of title IX and, hence, of this regulation, the membership policies and practices of certain organizations which, though educational in nature or assisted by an education institution, have traditionally restricted their membership to members of one sex. It is important to note that, with respect to fraternal organizations, both the amendment and the regulation limit their exemption to fraternties and sororities of a social nature. Thus, membership policies of business and other professional fraternities and sororities may be subject to coverage either if they themselves receive Federal financial assistance in connection with an education program or activity or if they fall within the ambit of subparagraph 86.31(b)(7) under which recipients are prohibited from providing significant assistance to agencies, organizations or persons which discriminate on the basis of sex.

29

Apart from the changes noted immediately above, Subpart B remains substantively the same as it appeared in the proposed regulation. Section 86.12 provides that the regulation does not apply to religiously controlled institutions to the extent that such application would be inconsistent with the religious tenets of the controlling organization. Section 86.13 of the regulation provides that all public and private military schools which are recipients of Federal financial assistance, whether secondary or postsecondary, are exempt from coverage. Neither the statute nor the regulation applies to United States military and merchant marine academies since these schools are Federal entities rather than recipients of Federal assistance.

30

The statute covers admissions in only certain institutions: vocational, professional, graduate, and public undergraduate institutions, except such of the latter as from their founding have been traditionally and continually single-sex. The admissions policies of private undergraduate institutions are exempt. Under the statute and § 86.15, the admissions requirements do not apply, in general, to admissions to public or private preschool, elementary and secondary schools. Because the statute mandates such coverage as to vocational schools, however, admission to public or private vocational schools, whether at the junior high school, high school or post-secondary level, is covered by paragraph 86.15(c) and must be nondiscriminatory. With respect to coverage of admissions to institutions of professional and vocational education, the Secretary has interpreted the statute as excluding admissions coverage of professional and vocational programs offered at private undergraduate schools. Thus, admission to programs leading to a first degree in fields such as teaching, engineering, and architecture at such private colleges will be exempt under paragraph 86.15(d). A number of comments were received urging the Secretary to change his interpretation of the statute in this area. Even after reassessing the Department's position on this issue, the Secretary believes that Congress did not address the overlap between the term "professional" and the term "undergraduate." Thus, the Secretary remains convinced that, while that section of the statute pertaining to admissions might be read as including professional degrees wherever they are offered, the statute can also be read as stating that admissions to private undergraduate schools were to be totally exempt. The exemption in paragraph 86.15(d) for admissions to public traditionally and continually single-sex undergraduate institutions will affect only a few institutions. Likewise, § 86.16 of the regulation, concerning transition by single-sex institutions whose admissions are covered by the statute into institutions with nondiscriminatory admissions practices, will affect relatively few institutions.

SUBPART C—CHANGES

31

Section 86.21—Subparagraph 86.21(b)(2) is amended to include the words "and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable" following the paragraph as it appeared in the proposed regulation. That section is further amended by omitting the words "successful completion of" and inserting the words "success in."

32

Subparagraphs 86.21(c)(2) and (3) are amended by deleting the words "miscarriage, abortion" and inserting in lieu thereof the words "termination of pregnancy."

33

Subparagraph 86.21(c)(4) is amended by deleting the term "Ms."

34

Section 86.23—Paragraph 86.23(a) is amended to read as follows:

(a) *Nondiscriminatory recruitment.* A recipient to which this Subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

ANALYSIS

35

Neither of the two changes in Subpart C is substantive. The amendment to subparagraph 86.21(b)(2) clarifies a principle which provoked some confusion in the comments.

Both that change and the revision of paragraph 86.23(a) reflect the effort to conform the provisions of the regulations dealing with students and those dealing with employees. Apart from these changes, the substance of Subpart C remains unchanged and generally prescribes (subject to the appropriate admissions exemptions) requirements for nondiscrimination in recruitment and admission of students to education programs and activities. In addition to a general prohibition of discrimination in paragraph 86.21(a), the regulation delineates, in paragraph 86.21(b), specific prohibitions based on sex relating to such practices as ranking of applicants, application of quotas, and administration of tests or selection criteria. Use of tests for admission which are shown to have a disproportionately adverse effect on members of one sex must be shown validly to predict success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect must be shown to be unavailable (subparagraph 86.21(b)(2)). Further, in connection with this prohibition, § 86.22 of the regulation forbids a recipient from giving preference to applicants on the basis of their attendance at particular institutions if the preference results in discrimination on the basis of sex. Such preferences may be permissible under that section, however, if the granting institution can show that the pool of applicants eligible for such preferences includes roughly equivalent numbers of males and females, or it can show that the total number of applicants eligible to receive preferences is insignificant in comparison with its total applicant pool.

36

Specific prohibitions in Subpart C also forbid applying rules concerning such matters as marital or parental status in a manner which discriminates in admissions on the basis of sex (subparagraph 86.21(c)(1)). Subparagraph 86.21(c)(2) prohibits discrimination on the basis of pregnancy and related conditions, and subparagraph 86.21(c)(3) provides that recipients shall treat disabilities related to such conditions in the same manner and under the same policies as any other temporary disability or physical condition is treated. Finally, in addition to the provisions of § 86.23 discussed above, a recipient may not, under paragraph 86.23(b), recruit primarily or exclusively at institutions the student bodies of which are exclusively or predominantly single-sex if the effect of such recruitment efforts is to discriminate on the basis of sex.

SUBPART D—CHANGES

37

Section 86.31, concerning education programs and activities, is amended as follows:

38

Subparagraph 86.31(b)(6) is amended by adding after the word "behavior" the word "sanctions."

39

Subparagraph 86.31(b)(6) is amended by adding after the word "applicant" the words "including eligibility for in-state fees and tuition."

40

Subparagraph 86.31(b)(7) is amended to read as follows:

(b)(7) aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

Paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is inserted to read as follows:

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution: *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

41

Subparagraph 86.31(d)(2)(i) is amended by deleting the word "insure" appearing in the second line of the proposed regulation and substituting therefor the words "assure itself."

42

Subparagraph 86.32(c)(2) is amended after the word "students" in line 5 of the paragraph as it appeared in the proposed regulation to read as follows:

shall take such reasonable action as may be necessary to assure itself that such housing . . .

The remainder of the paragraph is unchanged.

43

Paragraph 86.34(a) is redesignated as § 86.34 and is amended further by adding six subparagraphs containing language:

(a) Providing adjustment periods with respect to classes and activities in physical education;

(b) Allowing grouping of students in physical education classes and activities by ability;

(c) Allowing separation of students by sex within physical education classes and activities during participation in contact sports;

(d) Requiring use of standards for measuring skill or progress in physical education classes which do not adversely affect members of one sex;

(e) Allowing portions of classes in elementary and secondary schools which deal exclusively with human sexuality to be conducted separately for boys and girls; and

(f) Allowing recipients to offer a chorus or choruses composed of members of one sex or predominantly composed of members of one sex if those choruses are based on vocal range or quality.

44

Paragraph 86.34(b) is redesignated as § 86.35 and retitled "Access to schools operated by L.E.A.s."

45

Paragraph 86.34(c) is redesignated as § 86.36 to read as follows:

§ 86.36 *Counseling and use of appraisal and counseling materials.*

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds tht the enrollment of a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

46

Paragraph 86.35(a) is redesignated as § 86.37 and the new section includes four paragraphs which include language:

(a) Generally prohibiting recipients from limiting eligibility for or providing different financial assistance to students on the basis of sex or from assisting outside organizations or persons which so discriminate in providing assistance, and from applying any rules or assisting in the application of any rules which treat members of one sex differently from members of the other sex on the basis of marital or parental status;

(b) Specifically allowing recipients to administer or assist in administration of sex-restrictive scholarships, fellowships or other forms of financial assistance established under a domestic or foreign will, trust, bequest or other similar instrument, if the overall administration is nondiscriminatory;

(c) Requiring the provisions of reasonable opportunities to receive athletic scholarships or grants-in-aid in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics, but allowing separate financial assistance for members of each sex provided in connection with separate athletic teams to the extent those teams are permitted under this regulation.

47

A new § 86.38 is added which is entitled "Employment assistance to students." The new section includes two paragraphs: Paragraph 86.35(b) becomes paragraph 86.38(a). Paragraph 86.35(c) is redesignated as paragraph 86.38(b).

48

Section 86.36 is redesignated as § 86.39 and is amended by adding at the end of the section as it appeared in the proposed regulation the sentence "However, any recipient which provides full coverage health service must provide gynecological care."

50

Paragraph 86.40(b) is amended to include five subparagraphs containing language:

1. Prohibiting discrimination against or exclusion of pregnant students from an education program or activity unless the student voluntarily requests to participate in a separate portion of the program or activity of the recipient;

2. Allowing a recipient to require a pregnant student to obtain a certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students

for other physical or emotional conditions;

3. Allowing recipients to offer separate instruction for pregnant students so long as admittance to such instruction is voluntary and provided such instruction is comparable to that offered to nonpregnant students;

4. Requiring recipients to treat pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom like any other temporary disability; and

5. Where a recipient does not maintain a temporary disability policy for the student or where a student does not qualify for leave, the recipient must treat pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom as a justification for a medical leave of absence at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

51

Paragraph 86.38(b), "Determination of student interest," and paragraph 86.38(c), "Affirmative efforts," of the proposed regulation have been deleted. Section 86.38 is redesignated as § 86.41 and is further amended to include language:

(a) Prohibiting discrimination by a recipient in any interscholastic, intercollegiate, club, or intramural athletics.

(b) Allowing separate teams when those teams are based on competitive skill or if they are in contact sports, but requiring that if a team is provided for members of one sex and not for the other in a non-contact sport and athletic opportunities for the sex for whom a team is not provided have previously been limited, members of that sex be allowed to try-out for the team offered. (Contact sports are defined for the purpose of the regulation.)

(c) Delineating some of the factors which will be considered in assessing whether a recipient has provided equal opportunity in the area of athletics.

(d) Allowing recipients an adjustment period during which they must work to comply with this section as quickly as possible but in no event allowing noncompliance to continue past one year from the effective date of the regulation in the case of elementary schools and in no case later than three years from the effective date of the regulation in the case of secondary and post-secondary schools.

52

A new § 86.42 is added concerning curriculum.

ANALYSIS

53

Several of the changes made in Subpart D are substantive in nature. The language in subparagraph 86.31(b)(7) has been amended in response to comments in order to clarify the Department's position when agencies, organizations or person not part of the recipient would be subject to the requirements of the regulation. Some of these "outside" organizations have been exempted from title IX with respect to their membership policies by a recent amendment to the Statute which was enacted in late 1974. This amendment is reflected, as already noted, in § 86.14 which exempts social fraternities and sororities, certain named groups such as the Girl Scouts and certain voluntary youth service organizations. Other groups, however, such as business and professional fraternities and sororities and honor societies continue to be covered. The regulation provides that if the recipient furnishes the "outside" agency or organization with "significant assistance," the "outside" agency or organization becomes so connected with the education program or activity of the recipient that any discriminatory policies or practices for which it is responsible become attributable to the recipient. Thus, such forms of assistance as faculty sponsors, facilities, administrative staff, etc., may be significant enough to create the nexus and to render the organization subject to the regulation. Such determinations will turn on the facts and circumstances of specific situations.

Section 86.31(c) provides that where a sex-restricted scholarship, fellowship, or other such award established by a foreign will, trust or similar legal instrument but administered by a recipient constitutes a benefit to a student *already matriculating* at the recipient institution (*e.g.* the Rhodes Scholarship and the Clare Fellowship which provides opportunities for male students at domestic institutions to study abroad), the scholarship, fellowship or award may not be administered by the recipient unless the recipient administers, provides, or otherwise makes available, reasonable opportunities for similar studies for students of the other sex. Such benefits may be derived from either domestic or foreign sources.

54

The language in subparagraph 86.32(c)(2) has been changed in response to numerous comments which indicated concern that institutions which list or approve off-campus housing would be required to conduct on-site reviews of that housing which would result in a high cost to the institution and thereby militate against its continuing to aid students in finding off-campus housing. Under the regulation, on-site reviews, while permissible, need not be made as a routine matter by institutions, but the institution must take reasonable steps to assure itself that off-campus housing is comparable with respect to quality, quantity, and cost for members of each sex, given the proportion of individuals of each sex seeking such housing.

55

The changes in § 86.34 are also substantive. Subparagraph 86.34(a) requires physical education classes at the elementary school level to comply fully with the regulation as quickly as possible but to be in full compliance no later than one year from the effective date of the regulation in order to permit schools and local education agencies sufficient time to adjust schedules and prepare staff. It further requires physical education classes at the secondary and post-secondary levels to comply fully with the regulation as quickly as possible but to be in full compliance no later than three years from the effective date of the regulation. During such grace periods, while the recipient is making any necessary adjustments, it must ensure that physical education classes and activities which are separate are comparable for members of each sex. The recipient must be able to demonstrate that it is moving as expeditiously as possible within the prescribed time frame toward eliminating separate physical education classes. The adjustment period permitted at the secondary and post-secondary levels is significantly longer than that to be permitted at the elementary level because of the existence of wide skill differentials attributable to the traditionally lower levels of training available to girls in many schools.

56

Subparagraph 86.34(b) provides that ability grouping in physical education classes is permissible provided that the composition of the groups is determined objectively with regard to individual performance rather than on the basis of sex. Subparagraph 86.34(c) allows separation of students by sex within physical education classes during competition in wrestling, boxing, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact. Subparagraph 86.34(d), requiring the use of standards for measuring skill or progress in physical education which do not impact adversely on members of one sex, is intended to eliminate a problem raised by many comments that, where a goal-oriented standard is used to assess skill or progress, women will almost invariably score lower than men. For example, if progress is measured by determining whether an individual can perform twenty-five push-ups, the standard may be virtually out-of-reach for many more women than men because of the difference in strength between average persons of each sex. Accordingly, the appropriate standard might be an individual progress chart based on the number of push-ups which might be expected of that individual.

57

Subparagraph 86.34(e) which allows separate sessions in sex education for boys and girls at the elementary and secondary school level was published on July 12, 1974, as a clarification of the proposed regulation published in June (39 FR 25667). The final language has been slightly modified in response to comments indicating that the original language published on July 12, which referred generally to "sessions involving sex education" was somewhat vague. The present language more precisely identifies the material which may be taught separately as that dealing "exclusively with human sexuality." It should be stressed, of course, that neither the proposed regulation nor these final provisions require schools to offer sex education classes. Rather, the regulation specifically allows particular por-

tions of any such classes that a school district elects to offer to be offered separately to boys and girls.

58

Numerous comments were received on the subject of physical education both in favor of and opposed to the position taken in the proposed regulation. Many commentators linked their opposition to coeducational physical education to their opposition to coeducational sex education classes. Some asked for separate but equal or comparable physical education. Others were opposed to the proposed regulation on the grounds of safety and supervision problems, and because they believed that physical differences between the sexes mandated differential treatment. Another group suggested that women would be discriminated against by losing in competition and receiving lower grades. Finally, some were opposed to any Federal involvement in local school matters.

59

The expanded section on counseling and use of appraisal and counseling materials was included in response to comments. Three amendments to the original language are of particular note: First, while the language which appeared in the proposed regulation treated only use of appraisal and counseling materials, paragraph 86.36(a) of the final regulation prohibits discriminatory counseling itself. Second paragraph 86.36(b) which incorporates some of the proposed language on materials also includes several further concepts. It allows use of different counseling materials based on sex if use of such materials is shown to be essential in eliminating sex bias. Recipients are required to use internal procedures for ensuring that their counseling materials are free from sex bias; and finally, where use of a particular test or instrument results in a classification which is substantially disproportionate in sexual composition, the recipient must take whatever action is necessary to assure itself that the disproportionate classification is not the result of a sex-biased test or of discriminatory administration of an unbiased test. Third, paragraph 86.36(c) requires that where a recipient educational institution finds that the composition of a class is disproportionately male or female, it must take steps to assure itself that the disproportion is not the result of sex-biased counseling or the use of discriminatory counseling or appraisal materials.

60

New § 86.37 concerning financial assistance to students has also been expanded over its earlier version as § 86.35 of the proposed regulation. The proposed regulation prohibited recipients from giving different types of financial assistance or different amounts of any form of such assistance on the basis of sex. The present provisions remain unchanged with respect to this requirement.

61

Numerous comments were received from colleges and universities claiming that the proposed paragraph 86.35(a) would cause to "dry-up" a substantial portion of funds currently available for student financial assistance made available through wills, trusts and bequests which require that award be made to members of a specified sex. As a result, a new paragraph 86.37(b) has been added which allows recipients to administer or assist in the administration of scholarships, fellowships or other financial assistance programs established pursuant to domestic or foreign wills, trusts, or similar legal instruments, which require that awards be made only to members of a specified sex, provided that the overall effect of such administration or assistance is nondiscriminatory. Thus, the regulation now requires institutions to award financial aid on the basis of criteria other than sex. Once those students eligible for financial aid have been identified, the financial aid office may award aid from both sex-restrictive and non-sex-restrictive sources. If there are insufficient sources of financial aid designated for members of a particular sex, the institution would be required to obtain the funds from other sources or to award less assistance from the sex-restrictive sources.

62

For example, if fifty students are selected by a university to receive financial assistance, the students should be ranked in the order in which they are to receive awards. If award is based on need, those most in need are placed at the top of the list; if award is based on academic excellence, those with the higher academic averages are placed at the top of the list. The list should then be given to the financial aid office which may match the students to the scholarships and other aid available, whether sex-restrictive or not. However, if after the first twenty students have been matched with funds, the financial aid office runs out of non-restrictive funds and is left with only funds designated for men, these funds must be awarded without regard to sex and not solely to men unless only men are left on the list. If both men and women remain on the list, the university must locate additional funding for the women or cease to give awards at that point.

The provision included in the proposed regulation exempting sex-restricted scholarships, fellowships, and other financial assistance programs established under foreign wills, trusts or similar legal instruments, has been removed. Where such scholarships, fellowships, and financial aid are administered by the recipient and constitute assistance to a student enabling him or her to *matriculate at the recipient institution*, they may be treated like similar forms of financial assistance established under domestic wills, trusts, and similar legal instruments or by acts of foreign governments, and paragraph 86.37(b) has been modified accordingly.

64

Subparagraph 86.37(c)(1) requires recipients to provide reasonable opportunities for athletic scholarships or grants-in-aid for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

65

Subparagraph 86.37(c)(2) retains the provision of paragraph 86.35(d) of the proposed regulation allowing sex-restrictive athletic scholarships provided as part of sex-restrictive athletic teams to the extent the operation of such teams is consistent with subparagraph 86.37(c)(1) and the athletics section of the regulation (§ 86.41).

66

Section 86.38 requires, as did its predecessor section, that assistance in making outside employment available to students, and that employment of students by a recipient must be undertaken in a nondiscriminatory manner.

67

Section 86.39, in addition to incorporating § 86.36 of the proposed regulation, requires that if full coverage health service is offered by recipients it must include gynecological care. This requirement should not be interpreted as requiring the recipient to employ a specialist physician. Rather, it is the Department's intent to require only that basic services in the gynecological field such as routine examinations, tests and treatment be provided where the recipient has elected to offer full health service coverage. Any limitations on health services offered cannot be based on sex.

68

The content of paragraph 86.40(a) is unchanged from the earlier proposal. The changes in paragraph 86.40(b) summarized above continue to require that pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom be treated like any other temporary disability. In response to many comments, the regulation now provides in subparagraph 86.40(b)(2) that a recipient may require a student who is or has recently been pregnant to obtain a doctor's certificate as to her ability to participate in the normal education program or activity so long as such a certificate is required of all students for other physical or emotional conditions. Subparagraph 86.40(b)(3) now allows a recipient to operate a portion of its program or activity separately for pregnant students. However, it prohibits mandatory assignment of students to such classes or schools and the instructional program offered separately must be comparable to that offered to nonpregnant students.

69

Section 86.41, the athletics section of the regulation, has been changed to meet some of the problems raised by the comments. Many comments received during the comment period indicate some confusion as to whether intramural programs are covered by this section. Since the intent is to cover intramurals, the phrase "interscholastic, intercollegiate, club or intramural athletics" has been substituted for the term "athletic programs" appearing in the first sentence of paragraph 86.38(a) of the proposed regulation.

70

Paragraph 86.41(a) provides that athletics must be operated without discrimination on the basis of sex. The Department continues to take the position that athletics constitute an integral part of the educational processes of schools and colleges and, as such, are fully subject to the requirements of title IX even in the absence of Federal funds going directly to athletics. Except for certain specific exemptions not directly pertinent to athletics, paragraph 901(a) of title IX is virtually identical to paragraph 601(a) of ttitle VI of the Civil Rights Act of 1964. Since the language of title IX so closely parallels that of title VI, in the absence of specific Congressional indications to the contrary, the Department has basically interpreted title IX consistently with interpretations of title VI in similar areas. Under title VI, the courts have consistently considered athletics sponsored by educational institutions to be an integral part of that institution's education program or activity and, consequently, covered by title VI. See, for example, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18 (1971) and *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 891 (5th Cir. 1966), *affirmed en banc*, 380 F.2d 385 (5th Cir. 1967) *cert. denied sub nom. United States* v. *Caddo Parish Board of Education*, 389 U.S. 840 (1967).

71

Similarly, in cases wherein plaintiffs have challenged state and local rules prohibiting competition between men and women in high school athletics as being a violation of the equal protection clause of the Fourteenth Amendment, interscholastic sports have been specifically recognized as part of the education process. *Brenden* v. *Independent School District 742*, 477 F.2d 1292, 1297–1299 (8th Cir. 1973); *Bucha* v. *Illinois High School Association*, 351 F. Supp. 69, 74 (M.D. Ill. 1972); cf. *Hass*. v. *South Bend Community School Corporation*, 289 N.E. 2d 495, 499 (S. Ct. Ind. 1972) and *Reed* v. *Nebraska School Activities Association*, 341 F. Supp. 258, 262 (D. Neb. 1972).

72

In addition, § 844 of the Education Amendments of 1974 (Pub. L. 93–380) compels the Department to "[P]repare and publish * * * proposed regulations implementing the provisions of title IX of the Education Amendments of 1972 * * * which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports." Thus, in light of the case law under title VI and the Fourteenth Amendment, and the Congressional mandate to cover intercollegiate athletics in § 844 of Pub. L. 93–380, the Department believes that coverage of athletics is mandated by title IX and that such coverage must be reflected in the regulation.

73

A substantial number of comments was received by the Department on the various issues raised concerning the athletic provisions of the proposed regulation. Numerous comments were received favoring a proposal submitted by the National Collegiate Athletic Association that the revenues earned by revenue-producing intercollegiate sports be exempted from coverage under this regulation. Other comments were submitted against this proposal.

74

The NCAA proposal was not adopted. There is no basis under the statute for exempting such sports or their revenues from coverage of title IX. An amendment to the Education Amendments of 1974 was introduced by Senator John Tower on the floor of the Senate specifically exempting from title IX revenue from revenue-producing intercollegiate athletics. 120 *Cong. Rec.* S 8488 (daily ed. May 20, 1974). The "Tower Amendment" was deleted by the conference committee and was, in effect, replaced by the so-called "Javits Amendment" which became § 844 of Pub. L. 93–380 mandating that the Department publish proposed title IX regulations whch would include "reasonable provisons" covering intercollegiate athletics.

75

In response to the comments, while paragraph 86.41(a) remains substantively the same as its predecessor, the remainder of the athletics section has been changed. Paragraph 86.38(b) of the proposed regulation required an annual determination of student interest by a recipient. This provision was widely misinterpreted as requiring institutions to take an annual poll of the student body and to offer all sports in which a majority of the student body expressed interest and abolish those in which there is no interest. The Department's intent, however, is to require institutions to take the interests of both sexes into account in determining what sports to offer. As long as there is no discrimination against members of either sex, the institution may offer whatever sports it desires. The "determination of student interest" provision has been removed. A new paragraph 86.41(c)(1) requires institutions to select "sports and levels of competition which effectively accommodate the interests and abilities of members of both sexes." In so doing, an institution should consider by a reasonable method it deems appropriate, the interests of both sexes.

Paragraph 86.38(c) of the proposed regulation required all recipients sponsoring athletic activities to take certain affirmative efforts with regard to members of the sex for which athletic opportunities have been limited notwithstanding the lack of any finding of discrimination. Since such a requirement could be considered "affirmative action" and was somewhat inconsistent with § 86.3, it has been deleted. However, "affirmative efforts" may still be required pursuant to paragraph 86.3(a) or may be undertaken on a voluntary basis pursuant to paragraph 86.3(b). Paragraph 86.41(b) permits separate teams for members of each sex where selection for the team is based on competitive skill or the activity involved is a contact sport. If, however, a team in a non-contact sport, the membership of which is based on skill, is offered for members of one sex and not for members of the other sex, and athletic opportunities for the sex for whom no team is available have previously been limited, individuals of that sex must be allowed to compete for the team offered. For example, if tennis is offered for men and not for women and a woman wishes to play on the tennis team, if women's sports have previously been limited at the institution in question, that woman may compete for a place on the "men's" team. However, this provision does not alter the responsibility which a recipient has under § 86.41(c) with regard to the provision of equal opportunity. Under § 86.41(c)(1), recipients are required to select "sports and levels of competition which effectively accomodate the interests and abilities of members of both sexes." Thus, an institution would be required to provide separate teams for men and women in situations where the provision of only one team would not "accommodate the interests and abilities of members of both sexes." This provision, of course, applies whether sports are contact or non-contact. As in the section on physical education, a contact sport is defined by using some examples and leaving the status of other sports to be determined on the basis of whether their purpose or major activity involves bodily contact

76

Paragraph 86.41(c) retains the substance of paragraph 86.38(d) of the proposed regulation but has been expanded to provide more guidance on what factors the Department considers integral to providing equal opportunities in athletics. A list has been provided for the guidance of recipients of items which will be considered by the Office for Civil Rights in evaluating a recipient's interscholastic, intercollegiate, club or intramural athletics to determine if equal opportunity is available. These items will be considered whether or not a recipient sponsors separate teams, since inequality of opportunity may exist even where women participate on the same teams with men. The enumeration of items is not intended as a limitation on the items which the Department may deem pertinent for consideration during a particular compliance investigation or review.

77

As provided in the proposed regulation, the Department will not consider, as a *per se* failure to provide equal opportunity, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if such separate teams are offered or sponsored. Clearly, it is possible for equality of opportunity to be provided without exact equality of expenditure. However, any failure to provide necessary funds for women's teams may be considered by the Department in assessing equality of opportunity for members of each sex.

78

Finally, paragraph 86.41(d) has been added to provide a period of time similar to that allowed in the area of physical education for recipients to adjust their athletics offerings to comply with the requirements of the regulation. The Department will construe this section as requiring recipients to comply before the end of the adjustment period wherever possible.

79

The last substantive change in Subpart D is the addition of specific exemption of textbooks and curricular materials from the scope of the regulation. The new section explicitly states the Department's position that title IX does not reach the use of textbooks and curricular materials on the basis of their portrayals of individuals in a stereotypic manner or on the basis that they otherwise project discrimination against persons on account of their sex. As stated in the preamble to the proposed regulation, the Department recognizes that sex stereotyping in textbooks and curricular materials is a serious matter. However, the imposition of restrictions in this area would inevitably limit communication and would thrust the Department into the role of Federal censor. There is no evidence in the legislative history that the proscription in title IX against sex discrimination should be interpreted as requiring, prohibiting or limiting the use of any such material. Normal rules of statutory construction require the Department, wherever possible, to interpret statutory language in such a way as to avoid potential conflicts with the Constitution. Accordingly, the Department has construed title IX as not reaching textbooks and curricular materials on the ground that to follow another interpretation might place the Department in a position of limiting free expression in violation of the First Amendment.

80

The Department received a number of comments as well as one petition concerning discrimination in textbooks and curricular materials. The comments in favor of including coverage of textbooks and curricular materials came from national organizations, several college or university presidents or chancellors, several local school superintendents, several local organizations and interest groups, and a number of individuals. Comments opposing coverage were also submitted.

SUBPART E—CHANGES

81

Sections 86.41 through 86.51 are redesignated as §§ 86.51 through 86.61. Subparagraph 86.51(a)(4) is added providing as follows:

A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such a preference has the effect of discriminating on the basis of sex in violation of this Part.

82

Subparagraph 86.51(b)(2) is amended to add after the word "termination" the words "application of nepotism policies." Subparagraph 86.51(b)(6) is amended to delete the words "pregnancy leave" and to substitute therefor the words "leave for pregnancy, childbirth, false pregnancy, termination of pregnancy."

83

Section 86.53 is amended by deleting § 86.53(a) and substituting the following:

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

84

Section 86.54 is amended by deleting paragraphs 86.44 (b) and (c) as they appeared in the proposed regulation and by substituting a new paragraph 86.54(b) to read:

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

85

Paragraph 86.55(c) is amended by deleting the words "operate to." Section 86.57 is amended by deleting paragraphs 86.57 (b), (c), (d) and (e) and by substituting therefor language:

(1) Prohibiting discrimination in employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(2) Requiring treatment of pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom, to be treated as any other temporary disability for the purposes of leave, seniority and other benefits or services.

(3) Requiring, where a recipient does not maintain a leave policy or where an employee does not qualify for leave under such a policy because of inadequate longevity on the job, that the recipient shall treat an employee's pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom, as a justification for reasonable leave without pay with guaranteed reinstatement upon her return.

86

Section 86.60 is amended by deleting the term "Ms."

ANALYSIS

87

Before discussing the substantive changes in Subpart E, one explanation is needed regarding a section that was not changed. Subpart E generally follows the Sex Discrimination Guidelines (29 CFR Part 1604) of the Equal Employment Opportunity Commission (EEOC) and the regulations of the Office of Federal Contract Compliance (OFCC), United States Department of Labor (41 CFR Part 60). The EEOC administers title VII of the Civil Rights Act of 1964, which prohibits employment discrimination, and the OFCC is responsible for the coordination and implementation of Executive Order 11246, as amended, which prohibits employment discrimination by Federal contractors. HEW is responsible for administration, pursuant to the OFCC regulations, of the Executive Order as to Federal contractors who are educational institutions. Virtually all recipients subject to this Part 86 are also subject to title VII and many are also subject to the Executive Order. Except in the area of fringe benefits, where Subpart E of the title IX regulation differs from the title VII Sex Discrimination Guidelines of the EEOC, an employer who complies with the title IX regulation will generally be complying both with title VII and the Executive Order. It should be emphasized, however, that nothing in the title IX regulation alters any responsibilities that an employer may have under the Executive Order or title VII. Paragraphs 86.3(b) and 86.6(a) of Subpart A have been modified to accentuate this point.

88

Accordingly, subparagraphs 86.56(b)(2) of Subpart E remains the same as subparagraph 86.46(b)(2) as it appeared in the proposed regulation and continues to follow the Executive Order regulations in requiring that fringe benefit plans provide either for equal periodic benefits to members of each sex or equal contributions by the employer for members of each sex (§ 86.39 imposes identical requirements for student benefit plans). The title VII Sex Discrimination Guidelines of the EEOC differ in that they prohibit payment of unequal periodic benefits on the basis of sex and preclude employers from justifying unequal periodic benefits on the basis of differences in cost for males and for females. While the approach taken in the final regulation is felt to be the most reasonable at present, the Secretary recognizes the need to move toward some provision for equality in periodic benefits. In view of the potential problems associated with such a provision and also with the present inconsistency between the EEOC, OFCC and HEW approaches, the President has directed that a report be prepared by October 15 recommending a single approach.

89

Subparagraph 86.51(a)(1) makes it clear that the regulation applies to part-time employees. In the preamble to the proposed regulation it was stated that the section concerning fringe benefits (now § 86.56) would be interpreted as follows: It would require that where an institution's female permanent employees are disproportionately part-time or its permanent part-time employees are disproportionately female, and the institution does not provide its permanent part-time employees fringe benefits proportionate to those provided full time employees, the institution demonstrate that such a manner of providing fringe benefits does not discriminate on the basis of sex. Assuming the absence of discriminatory hiring practices on the part of an employer which channel female job applicants into part-time positions, it is questionable whether the Department has the authority to place the burden on an employer to demonstrate that failure to give part-time employees fringe benefits proportionate to those provided to full-time employees under the circumstances stated above is not discriminatory. Since discriminatory hiring practices which channel female job applicants into part-time jobs are clearly prohibited by subparagraph 86.51(a)(1), and because of the questions which may be raised as to the soundness of the interpretation given to § 86.56 in the preamble to the proposed regulation, the Department will assume the initial burden of demonstrating that a particular method of providing fringe benefits to part-time employees is discriminatory.

90

Subparagraph 86.51(a)(4) parallels paragraph 86.23(b) which concerns student recruitment. It prohibits recipients from granting preferences to employment applicants who are graduates of particular institutions, the student bodies of which are exclusively or predominantly of one sex, if the effect of such preferences results in discrimination on the basis of sex.

91

Paragraph 86.43(a) as it appeared in the proposed regulation required recipients who recruit for employment to make comparable efforts to recruit members of each sex. Paragraph 86.53 (a) of the final regulation no longer requires comparable efforts but provides that a recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. This change recognizes that, under some circumstances, an employer may expend greater efforts to recruit members of one sex without discriminating against members of the other. For example, where a school district is located close to an all-female private undergraduate school, the district may have to expend greater efforts to recruit male teachers than it will have to use to recruit female teachers. However, where a recipient is presently discriminating on the basis of sex, or has in the past so discriminated, it shall take remedial action to recruit members of the sex discriminated against until the effect of such past discrimination no longer exists.

92

In response to the public comments, the language of paragraph 86.54(b) has been simplified over the language appearing in the proposed regulation to prohibit a recipient from enforcing any policy or practice which results in the payment of wages to members of one sex at a rate less than that paid to members of the other sex for equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions. This makes the title IX regulation consistent with the wording of the Equal Pay Act of 1963, Pub. L. 88-38, 29 U.S.C. paragraph 206(d), and will enable the Director to rely on the case law established under the Equal Pay Act to interpret and enforce paragraph 86.54 (b).

93

Paragraphs 86.57 (b), (c) and (d) have been slightly modified from the earlier version to make it clear that a recipient cannot discriminate on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom and that such conditions and any temporary disabilities resulting therefrom must be treated by the recipient as any other temporary disability for all job-related purposes.

94

Paragraph 86.47(e) in the proposed regulation provided that an employee could not be required to commence leave related to pregnancy so long as her physician certified that she was capable of performing her duties, and that she must be allowed to resume work after such a leave no more than two weeks after her physician certifies that she is capable of doing so or, in the case of an employee who is a teacher, at the beginning of the first academic term after such certification is made. This section has been completely deleted from the final regulation since it is inconsistent with paragraph 86.57(b) which requires that all conditions related to pregnancy be treated as disabilities for job-related purposes. If a recipient requires that any employees suffering from a temporary disability be required to obtain a physician's certification that they are capable of continued work, then it may also require such a certification from pregnant employees. If a recipient requires all employees who take sick leave for a temporary disability to return to work after such leave two weeks after a physician certifies that such employees are capable of returning, then the same procedure must be utilized for pregnant employees. However, if none of these certifications is required for other temporary disabilities, none may be required of pregnant employees. Likewise, a recipient may not require pregnant employees to give advance notice of when they intend to commence sick leave unless such advance notice is also required of all other employees who intend to go on sick leave due to a temporary disability in cases where advance knowledge of the absence makes such notice possible.

95

Paragraph 86.60(a) prohibits pre-employment inquiries as to an applicant's marital status since such inquiries are frequently the foundation for discrimination against married women. Subparagraph 86.21(c)(4) in Subpart C contains a similar prohibition with regard to pre-admission inquiries. The proposed regulation proscribed inquiries into whether a job applicant was "Ms., Miss or Mrs." Since under paragraph 86.60(b) inquiries as to the sex of an applicant may be made so long as it is made of members of both sexes and is not used to discriminate, the inquiry proscribed in paragraph 86.60(a) as to whether an applicant is "Ms., Miss or Mrs." has been changed to delete the "Ms."

96

Finally, § 86.61 permits consideration of sex in making employment decisions where sex is a "bona fide occupational qualification." This section is retained in the final regulation to make the title IX regulation consistent with the Sex Discrimination Guidelines of the EEOC and with the OFCC regulations implementing Executive Order 11246. This section will be interpreted narrowly, consistent with interpretations already made under title VII of the Civil Rights Act of 1964 and the Executive Order.

SUBPART F

§ 86.71 Interim Procedures

For the purposes of implementing this Part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR §§ 80-6—80-11 and 45 CFR Part 81.

The Secretary has chosen to adopt the title VI procedures for use during the interim period between the effective date of this regulation and effectiveness of the final consolidated procedural regulation to simplify enforcement during that time and to avoid applying a different procedure for enforcement of requirements concerning discrimination based on race, color, or national origin from those based on sex. The Department is publishing, simultaneously with this final regulation, a proposed consolidated procedural regulation which will apply to most of the Department's civil rights enforcement activities. Comments on that proposal are solicited, as provided in the notice of proposed rulemaking, for 45 days.

QUESTIONS

Questions concerning the application or interpretation of this regulation should be addressed to the Regional Directors of the Office for Civil Rights whose addresses are as follows:

Region I—Mr. John G. Bynoe, RKO General Building, 5th Floor, Bulfinch Place, Boston, Massachusetts 02114.

Region II—Mr. Joel Barkan, 26 Federal Plaza, Room 3908, New York 10007.

Region III—Mr. Dewey Dodds, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19101.

Region IV—Mr. William Thomas, 50 Seventh Street, N.E., Room 404, Atlanta, Georgia 30323.

Region V—Mr. Kenneth A. Mines, 309 W. Jackson Boulevard, 10th Floor, Chicago, Illinois 60606.

Region VI—Ms. Dorothy D. Stuck, 1114 Commerce Street, Dallas, Texas 75202.

Region VII—Mr. Taylor D. August, 12 Grand Building, 12th and Grand Avenue, Kansas City, Missouri 64106.

Region VIII—Mr. Gilbert D. Roman, Room 11037 Federal Building, 1961 Stout Street, Denver, Colorado 80202.

Region IX—Mr. Floyd L. Pierce, 760 Market Street, Room 700, San Francisco, California 94102.

Region X—Ms. Marlaina Kiner, 6101 Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101.

Dated: May 27, 1975.

CASPAR W. WEINBERGER,
Secretary

Dated: May 27, 1975.

Approved:

GERALD R. FORD,
President.

Part 86 is added to read as set forth below:

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX UNDER FEDERALLY ASSISTED EDUCATION PROGRAMS AND ACTIVITIES

Subpart A—Introduction

Sec.
86.1 Purpose and effective date.
86.2 Definitions.
86.3 Remedial and affirmative action and self-evaluation.
86.4 Assurance required.
86.5 Transfers of property.
86.6 Effect of other requirements.
86.7 Effect of employment opportunities.
86.8 Designation of responsible employee and adoption of grievance procedures.
86.9 Dissemination of policy.

Subpart B—Coverage

86.11 Application.
86.12 Educational institutions controlled by religious organizations.
86.13 Military and merchant marine educational institutions.
86.14 Membership practices of certain organizations.
86.15 Admissions.
86.16 Educational institutions eligible to submit transition plans.
86.17 Transition plans.
86.18–86.20 [Reserved].

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

86.21 Admission.
86.23 Preference in admission.
86.25 Recruitment.
86.24–86.30 [Reserved].

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

Sec.
86.31 Education programs and activities.
86.32 Housing.
86.33 Comparable facilities.
86.34 Access to course offerings.
86.35 Access to schools operated by L.E.A.s.
86.36 Counseling and use of appraisal and counseling materials.
86.37 Financial assistance.
86.38 Employment assistance to students.
86.39 Health and insurance benefits and services.
86.40 Marital or parental status.
86.41 Athletics.
86.42 Textbooks and curricular material.
86.43–86.50 [Reserved].

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

86.51 Employment.
86.52 Employment criteria.
86.53 Recruitment.
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86.55 Job classification and structure.
86.56 Fringe benefits.
86.57 Marital or parental status.
86.58 Effect of State or local law or other requirements.
86.59 Advertising.
86.60 Pre-employment inquiries.
86.61 Sex as bona-fide occupational qualification.
86.62–86.70 [Reserved].

Subpart F—Procedures

86.71 Interim procedures.

Subpart A—Introduction

§ 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 86.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except §§ 904 and 906 thereof; 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Health, Education, and Welfare.

(d) *"Director"* means the Director of the Office for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this Part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to subparagraph (c)(iii).

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or

alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.7 Effect of employment opportunities.

The obligation to comply with this Part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902 Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B—Coverage

§ 86.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

§ 86.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862, amending Sec. 901)

§ 86.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, § 86.16, § 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.17 Transition plans.

(a) *Submission of plans.* An institution to which § 86.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.18–86.20 [Reserved]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 86.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 86.16 and 86.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.24–86.30 [Reserved]

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a

recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships; or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activtiy takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 86.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the

use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 86.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein: *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b) (1) of this paragraph, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b) (2) (i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b) (2) (i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41 of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 86.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b) (1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing,

wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 86.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.43–86.50 [Reserved]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 86.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit

or service of employment not subject to the provision of § 86.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR §§ 80–6—80–11 and 45 CFR Part 81.

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APPENDIX VI. EEOC FORM 221
HIGHER EDUCATION STAFF INFORMATION (EEO-6)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

Higher Education Reporting Committee
2401 E. Street, N.W.
Washington, D.C. 20506

EEOC FORM 221, HIGHER EDUCATION STAFF INFORMATION (EEO–6)

APPROVED BY GAO
B–180541 (R0168)
INSTRUCTION BOOKLET

Under Public Law 88–352, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, all institutions of Higher Education both public and private, that have 15 or more employees are required to keep records and to make such reports biennially to the Equal Employment Opportunity Commission as are specified in the regulations of the Commission. The applicable provisions of the law, Section 709(c) of Title VII, and regulations issued by the Commission are printed in full in the Appendix to these instructions.

In the interests of consistency, uniformity and economy, the EEO–6 has been developed to meet most of the basic compliance reporting needs of various Federal government agencies that have responsibility with respect to equal employment opportunity. A joint reporting committee will represent these Federal agencies: the Office for Civil Rights (OCR) of H.E.W., the Office of Federal Contract Compliance (OFCC) of the Department of Labor, and the Equal Employment Opportunity Commission (EEOC). The legal bases (statutes or regulations) for the data needs of these agencies are referenced in the Appendix. The EEOC form 221 should also serve as a valuable tool for use by the institutions in evaluating their own programs for insuring equal employment opportunity.

The filing of the EEO—6 report is required by law; *it is not voluntary*. Under Section 709(c) of Title VII, the EEOC, or the Attorney General of the United States in the case of a public institution, may compel an institution to file the report by obtaining an order from a United States District Court.

1. WHO MUST FILE

Those who must file this report include all institutions of higher education, both public and private; institutional systems; colleges and universities, including community colleges and junior colleges with 15 or more employees. Campuses within a multicampus institution or within an institutional system which are separately administered (such as a branch of a parent institution or one of the administratively-equal campuses of a multicampus institution) must complete and file the EEO–6 report. Separate administrative offices of a multicampus institution or institutional system must also complete and file the EEO–6 report.

2. WHO MUST KEEP RECORDS

Every institution of higher education as listed in No. 1 above with 15 or more employees must make and keep records and statistics which would be necessary for the completion of the EEO–6 form as set forth in these instructions. See regulations 1602.48 and 1602.49 in the Appendix.

3. HOW TO FILE

A separate report must be filed covering total employment of each institution as listed in number 1 above.

In all cases, the original and three copies will be returned to the address given on the first page of the form.

4. WHEN TO FILE

This report must be filed with the Equal Employment Opportunity Commission for the first time no later than November 30, 1975. Employment statistics should cover the payroll period closest to October 1, 1975, and biennially thereafter.

5. WHERE TO FILE

Forward the original and first three copies of the completed report to the P.O. Box address shown on the EEOC Form 221. Requests for additional reporting forms should also be directed to that same P.O. Box address.

6. REQUESTS FOR INFORMATION AND SPECIAL PROCEDURES

An institution (or reporting unit) as described in number 1 above which claims that preparation or the filing of the

EEO–6 report would create an undue hardship may apply to the Commission for a special reporting procedure, submitting a written alternative proposal for compiling and reporting the information.

Only those special procedures approved in writing by the Commission are authorized. Such authorization will remain in effect for one reporting year. Direct all requests for special exemption including proposed special reporting procedures and any other pertinent information to the Equal Employment Opportunity Commission, Attention: Office of Research, 2401 "E" Street, NW., Washington, D.C. 20506.

7. ELECTED AND APPOINTED OFFICIALS

Section 701(f) of the Equal Employment Opportunity Act of 1972 contains an exemption for elected and certain appointed officials that is set forth in the definition of "employee" in the Appendix. Based on the legislative history of Section 701(f), the General Counsel of the Commission has ruled that this exemption was intended by the Congress to be construed narrowly. This ruling concluded that only the following persons would be included in the exemption:

(1) State and local elected officials.
(2) Such official's immediate secretary, administrative, legislative, or other immediate or first-line aide.
(3) Such official's legal advisor.
(4) Appointed cabinet officials in the case of a Governor, or heads of executive departments in the case of a Mayor or County Council.

No other persons appointed by an elected official are exempt under this interpretation. In no case is any person exempt who is appointed by an appointed official, whether or not the latter is himself exempt. Furthermore, as specified in Section 701(f), the exemption does not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

These rules will be applicable to public institutions administered by state and local governments.

8. CONFIDENTIALITY

All reports and information from individual reports are subject to the confidentiality provisions of Section 709(e) of Title VII, and may not be made public by EEOC prior to the institution of any proceeding under Title VII. However, aggregate data may be made public in such a way as not to reveal any particular employer's statistics.

The prohibition against disclosure mandated by Section 709(e) does not apply to the Office of Federal Contract Compliance and contracting agencies of the Federal government which require submission of EEO–6 pursuant to Executive Order 11246. Reports from prime contractors and subcontractors doing business with the Federal government may not be confidential under Executive Order 11246. Information from institutions holding federal grants may be disclosed to the public by the Office for Civil Rights as part of its normal program activities, and will be disclosed to the public in response to requests for EEO–6 data as required by the Freedom of Information Act (P.L. 93—502).

INSTRUCTIONS ON HOW TO PREPARE THE EEO–6 REPORT

Definitions of Terms and Categories are Located in the Appendix

PART I—IDENTIFICATION

SECTION A. INSTITUTION/CAMPUS OR SCHOOL

Enter the name, address, and zip code of the respondent, only if: the preprinted label is in error, the respondent is a new institution, campus or branch, the separately administered central office of a multicampus institution or institutional system or the respondent has been renamed, consolidated or reorganized.

SECTION B. REPORT COVERS

Indicate by a check mark the institution covered by the report whether a single campus institution, a main campus, or a separate administrative office of either a multicampus institution or of an institutional system. If it is none of the above, check other and specify in the space provided for that purpose.

SECTION C. PARENT INSTITUTION

Enter the name of the parent institution whether a multicampus institution or institutional system of which the reporting unit (branch campus, etc.) is a part.

SECTION D. FEDERAL CONTRACT INFORMATION

This information is required to meet the legal requirements of the OFCC as prescribed in 41 CRF 60–1.7 of their rules and regulations. If the institution is a Federal contractor and meets any of the criteria shown it must answer these questions.

These questions are to determine whether a respondent has "Government Contracts" within the meaning of Executive Order 11246, as amended, and the level of funding of those contracts. In responding, the institution should be careful to distinguish between Federal grants and Federal contracts. The Regulation implementing the Executive Order defines a Government contract as "any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or the use of real or personal property, including lease arrangements". Research is listed as one of the services which may be obtained by contract.

The institution should review the project documents to determine whether it is a grant or a contract. In most cases the face sheet of contract documents will have a box with the title "Contract Number" and will be signed for the

Government by a Contracting Officer. Similarly, grants will have a "Grants Number" on the face sheet and will be signed by a Grants Administration Officer or similar official.

In addition to reviewing direct Federal Projects, institutions should carefully check their contracts with other higher education institutions, industry, and other organizations to determine whether any of them are Government subcontracts.

Under Section 209(a) or Executive Order 11246, the penalties for failure by a Federal contractor or subcontractor to comply may include termination of the Federal Government contract and debarment from future Federal contracts.

PART II FULL-TIME STAFF STATISTICS—OCCUPATIONAL ACTIVITY

Full-time staff statistics should include the number of persons, except those elected and appointed officials specified in number 7 above, who are on the payroll of the institution (or reporting unit) and are classified by the institution as full-time employees in a particular job classification regardless of job title. These will include the faculty who are on sabbatical leave, and they should be reported on the basis of their regular salaries even though they may be receiving a reduced annuity while on leave. Persons who are on leave but remain on the payroll should also be reported. It will not include employees whose services are paid by an outside contractor performing a function for the institution such as custodial, maintenance, or food service, security, etc., or persons who volunteer or donate their services to the institutions.

A person engaged in two or more separate activities will be reported as full time in the principal activity. The judgement as to what constitutes principal activity should be made by the institution or reporting unit. The occupational activities are defined in the Appendix.

Salary will not include payments in kind such as housing or other fringe benefits.

Every employee must be accounted for in *one and only one* of the occupational activities in Part II.

SECTION A. 9–10 MONTH CONTRACT SALARY

Report the number of full-time employees working under 9–10 months contract, by the primary occupational activity and salary class intervals under each activity, by sex for each of the designated race/ethnic categories. Include in this section only the faculty reported in Activity 2 whose base pay is for the standard academic year of two semesters, three quarters or two terms of a "trimester" program.

SECTION B. OTHER

Report the number of full-time faculty with less than 9–10 month contracts by sex for each of the designated race/ethnic categories.

SECTION C. 11–12 MONTH CONTRACT SALARY

Report the number of full-time employees working under 11–12 month contract, or annual salary, by the primary occupational activity and salary class intervals under each activity, by sex for each of the designated race/ethnic categories. Persons whose salaries are not determined by a contractual arrangement but whose pay may be calculated as an annual salary will be reported in this Section. Report in Activity 2 only those faculty members whose actual duties are for 11–12 months contract or annual salary.

SECTION D. ADDITIONAL INFORMATION

1. Persons with Academic Rank and/or Tenure

Report in line 1 of D the number of full-time staff members included in Activity 1 of Section A and C Part II who, although their principal work is within the activity, also hold an academic rank and/or have tenure status within the institution.

2. Full-Time Staff Paid in Full From "Soft Money" Sources

Report in line 2 of D the number of persons on the institution's payroll, employed full-time, who are paid in full from funds, traditionally referred to as "Soft Money", *that are not part of the general operating fund budget of the institution*. The funds may be from government agencies or private foundations for programs involving public services; research; capital improvements; administration of student-aid programs for grants, work aid, and loans; and other miscellaneous services.

Do not include in this category tenured faculty members even though they are paid from "Soft Money" sources.

3. TOTAL ALL FOREIGN NATIONALS

Report in line 3 the number of employees who are foreign nationals and are employed full-time. These employees should also be reported in either Section A, B or C of the report.

PART III—FULL TIME FACULTY BY RANK AND TENURE

Report in this section only persons who are members of the faculty as defined in the Appendix. Count an employee only once. These will be reported by tenure status.

A. Tenured

Report by sex and race/ethnic designation the number of persons who have tenure status within the institution in each of the academic ranks shown in lines 1 through 6. Total employees on line 7.

In reporting the number of persons with academic rank and tenure, use the institution's criteria or requirements for either notwithstanding the fact that the policy used by the institution may be different from that which meets or refers to a national set of principles.

B. Non Tenured on Track

Report by sex and race/ethnic designation the number of persons who are non tenured but are in positions which lead to consideration for tenure in each of the academic ranks shown in lines 8 through 13. Total employees on line 14.

C. Other Non Tenured

Report by sex and race/ethnic designation the number

of persons who are in non tenure earning positions in each of the academic ranks or their equivalents shown in lines 15 through 20. Total employees on line 21.

PART IV—OTHER EMPLOYMENT DATA

Part-Time

Report in lines 1 through 7 the number of employees in their respective activities who work for a length of time in a day, week, etc., defined by the institution as part-time employment. **Do not** include temporary, part-time employees such as: (1) students who are hired to help at registration time or to work in the bookstore for a day or two at the start of the quarter or whose work schedules are only for a few hours of the day or week, (2) persons who volunteer or donate their services to the institution on a part-time basis, (3) persons who may be paid from other than the institution's payroll, and (4) graduate student instructors.

Report the part-time faculty by Tenured, Non Tenured on Track, and Other Non-Tenured. Report Total Part Time on line 8.

New Hires—Omit This Section in 1975.

Report in lines 9 through 15 the number of full-time employees in the respective activities who were included in the payroll for the first time between July 1, 1977 and September 30, 1977 and every survey year thereafter, and who also are included in Section II A or II C. These are persons who were hired for full-time employment for the first time or after a break in service. **Do not** include as new hires persons who have returned from sabbatical leave or full time employees with less than 9–10 month contracts. Report employment for the newly hired full-time faculty separately by Tenured, Non-tenured on Track, and Other Non Tenured.

Certification

The form must be certified and signed by an official of the institution or reporting unit responsible for the information submitted.

APPENDIX

1. DEFINITIONS APPLICABLE TO ALL EMPLOYERS

a. **"Commission"** refers to the Equal Employment Opportunity Commission established under Title VII of the Civil Rights Act of 1964.

b. **"OFCC"** refers to the Office of Federal Contract Compliance, U.S. Department of Labor, established to implement Executive Order 11246 (as amended).

c. **"OCR"** refers to the Office for Civil Rights of the Department of Health, Education, and Welfare established to enforce Title VI of the Civil Rights Act of 1964 (P.L 88–352), Title IX of the Education Amendments of 1972 (P.L. 92–318), the Comprehensive Health Manpower Training Act of 1971 (P.L. 92–157), as amended by Public Law 93–348, and the Nurse Training Act of 1971 (P.L. 92–58).

d. **"Higher Education Reporting Committee"** is a committee representing the Commission, OCR of HEW, and OFCC for the purpose of administering this report system.

e. **"Single-Campus Institution"** A single campus (or single building or structure) with a single administrative body.

f. **"Main Campus"** In those institutions consisting of a main campus and one or more branch campuses, the main campus (sometimes called the parent institution) is usually the location of the core, primary, or most comprehensive program. Unless the institution-wide or central-administrative office of such institutions is reported to be at a different location, the main campus is also the location of the central-administrative office.

g. **"Branch Campus"** A campus of an institution of higher education which is organized on a relatively permanent basis (i.e., has a relatively permanent administration), which offers an organized program or programs of academic work of at least 2 years (as opposed to courses), and which is located in a community different from that in which its parent institution is located. Being in a community different from that of the parent institution means that a branch is located beyond a reasonable commuting distance from the main campus of the parent institution.

h. **"Administratively Equal Campus of a Multicampus Institution"** A reporting unit separately administered which can not be classified as a branch campus and which is located within the boundaries of the community in which the multicampus is located.

i. **"Separate Administrative Office of a Multicampus Institution"** The central administration or single administrative body of a Multicampus Institution which sets the organization-wide policies, determines budgetary and other administrative requirements, but whose personnel can not be properly included in the report of a specific institution (or other reporting unit).

j. **"Separate Administrative Office of an Institutional System"** The central administration or single administrative body of an Institutional System which sets the organization-wide policies, determines budgetary and other administrative requirements, but whose personnel cannot be properly included in the report of a specific institution (or other reporting unit).

k. **"Institutional System"** A complex of two or more institutions of higher education, each separately organized or independently complete, under the control or supervision of a single administrative body.

l. **"Multi-Campus Institution"** An organization bearing resemblance to an institutional system, but unequivocally designated as a single institution with either of two organizational structures: (1) an institution having two or more campuses responsible to a central administration (which central administration may or may not be located on one of the administratively-equal campuses) or (2) an institution having a main campus with one or more branch campuses attached to it.

m. **"Other"** It is possible that a reporting unit may not fall within any of the above categories. Use "Other" in such cases and specify for future use by EEOC.

n. **"Employer"**, under Section 701(b), Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in Section 2102 of Title 5 of the United States Code), or a bona fide private membership club (other than a labor organization) which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954.

o. **"Employee"** means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance salesmen who are considered to be employees for such purposes solely because of the provisions of Section 3121(d) (3) (b) of the Internal Revenue Code. The term "employee" SHALL NOT include persons who are hired on a casual basis for a specified time, or for the duration of a specified job, and work on remote or scattered sites or locations where it is not practical or feasible for the employer to make a visual survey of the work forces within the report period; for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employee's work at the site; persons temporarily employed in any industry other than construction, such as seamen, longshoremen, waiters, movie extras, agriculturel laborers, lumbermen, etc., who are obtained through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement; or persons on the payroll of a temporary service agency who are referred by such agency for work to be performed ont he premises of another employer under that employer's direction and control.

It is the opinion of the General Counsel of the Commission that Section 702, Title VII of the Civil Rights Act of 1964, as amended, does not authorize a complete exemption of religious organizations from the coverage of the Act or of the reporting requirements of the Commission. The exemption for religious organizations applies to discrimination on the basis of religion. Therefore, since the EEO Form 221 does not provide for information as to the religion of employees, religious organizations must report all information required by this form.

p. **"FICE CODE"** The Federal Interagency Committee of Education (FICE) code is an unstructured number unique for each institution. The assignment of this number to reporting units for data processing purposes by the EEOC will be done following the guidelines provided for its use by the National Center of Education Statistics of HEW. For further explanation of the assignment of the FICE code please refer to the Higher Education Directory 1973–74 of the Department of Health Education and Welfare.

2. DEFINITIONS APPLICABLE ONLY TO GOVERNMENT CONTRACTORS SUBJECT TO EXECUTIVE ORDER 11246

a. **"Order"** means Executive Order 11246, as amended.

b. **"Contract"** means any agreement or modification thereof between any contracting agency and any person for the furnishing of suppies or services or the use of real or personal property, including lease arrangements.

c. **"Prime Contractor"** means any employer having a Government contract or any federally assisted construction contract, or any employer serving as a depository of Federal Government funds.

d. **"Subcontractor"** means any employer having a contract with a prime contractor or another subcontractor calling for supplies or services required for the performance of a Government contract or federally assisted construction contract.

e. **"Contracting Agency"** means any department, agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

f. **"Administering Agency"** means any department, agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

g. **"Compliance Agency"** means the agency designated by the Director of the Office of Federal Contract Compliance to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of Executive Order 11246, as amended, as the Director may determine to be appropriate.

3. RESPONSIBILITIES OF PRIME CONTRACTORS

a. At the time of an award of a subcontract subject to these reporting requirements, the prime contractor shall inform the subcontractor of its responsibility to submit annual information reports in accordance with these instructions and, where necessary, provide the subcontractor with report forms which it shall obtain from its Compliance Agency.

b. If prime contractors are required by their Compliance Agencies, or subcontractors by their prime contractors, to submit notification of filing, they shall do so by ordinary correspondence. However, such notification is not required by and should not be sent to the reporting committee.

4. RACE/ETHNIC IDENTIFICATION

An employer may acquire the race/ethnic information necessary for this section ether by visual surveys of the work force, or from post-employment records. Since visual surveys are permitted the fact that race/ethnic identifications are not present on post-employment records is not an excuse for failure to provide the data called for.

Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirement. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are

responsible for the work of the employees or to whom the employees report for instructions or otherwise.

Please note that conducting a visual survey and keeping post-employment records of the race or ethnic origin is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and recordkeeping as to race, etc., relate only to applicants for jobs, not to employees.

The concept of race as used by the Equal Employment Opportunity Commission does not denote clearcut scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic category.

The five race/ethnic categories are defined as follows:

1. White (not of Hispanic origin): All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent.
2. Black (not of Hispanic origin): All persons having origins in any of the black racial groups.
3. Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
4. Asian or Pacific Islanders: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.
5. American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America.

5. PRIMARY OCCUPATIONAL ACTIVITY

a. Executive, Administrative and Managerial

Include all persons whose assignments require *primary* (and major) responsibility for management of the institution, or a customarily recognized department or subdivision thereof. Assignments require the performance of work directly related to management policies or general business operations of the institution department or subdivision, etc. It is assumed that assignments in this category customarily and regularly require the incumbent to exercise discretion and independent judgment, and to direct the work of others. Report in this category all officers holding such titles as President, Vice President, Dean, Director, or the equivalents, as well as officers subordinate to any of these administrators with such titles as Associate Dean, Assistant Dean, Executive Officers of accademic departments (chairmen, heads, or the equivalent) if their principal activity is administrative.

NOTE: Supervisory personnel of the technical, clerical, craft, and service/maintenance force will be reported within the specific categories.

b. Faculty

Include all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold academic-rank titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any one of these academic ranks. Report in this category Deans, Directors, or the equivalents, as well as Associate Deans, Assistant Deans, and executive officers of academic departments (chairmen, heads, or the equivalent) if their principal activity is instructional. **Do not** include student teaching or research assistants.

c. Professional Non Faculty

Include in this category persons whose assignments would require either college graduation or experience of such kind and amount as to provide a comparable background. Included would be all staff members with assignments requiring specialized professional training who should not be reported under Activity 1 (Executive) or Activity 2 (Faculty), and who should not be classified under any of the four "nonprofessional" categories of activities.

d. Clerical and Secretarial

Include all persons whose assignments typically are associated with clerical activities or are specifically of a secretarial nature. Include personnel who are responsible for internal and external communications, recording and retrieval of data (other than computer programmers) and/or information and other paper work required in an office, such as bookkeepers, stenographers, clerk typists, office-machine operators, statistical clerks, payroll clerks, etc. Include also sales clerks such as those employed full-time in the bookstore, and library clerks who are not recognized as librarians.

e. Technical and Paraprofessionals

Include all persons whose assignments require specialized knowledge or skills which may be acquired through experience or academic work such as is offered in many 2-year technical institutes, junior colleges or through equivalent on-the-job training. Include computer programmers and operators, draftsmen, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, dietitians, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic-physical sciences), and similar occupations not properly classifiable in other occupational-activity categories but which are institutionally defined as technical assignments.

Include persons who perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion under a "New Careers" concept.

f. Skilled Crafts

Include all persons whose assignments typically require special manual skills and a thorough and comprehensive knowledge of the processes involved in the work, acquired through on-the-job training and experience or through apprenticeship or other formal trianing programs. Include mechanics and repairmen, electricians, stationary engineers, skilled machinists, carpenters, compositors and type-setters.

g. Service/Maintenance

Include persons whose assignments require limited degrees of previously acquired skills and knowledge and in which workers perform duties which result in or contribute to the comfort, convenience and hygiene of personnel and the student body or which contribute to the upkeep and care of buildings, facilities or grounds of the institutional property. Include chauffeurs, laundry and dry cleaning operatives, cafeteria and restaurant workers, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, construction laborers, security personnel.

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1602 RECORDS AND REPORTS

Recordkeeping and Filing Requirements

Report EEO–6

Subpart O—Recordkeeping for Institutions of Higher Education

Sec.

1602.47 Definition
1602.48 Records to be made or kept.
1602.49 Preservation of records made or kept.

Subpart P—Higher Education Staff Information Report EEO–6

Sec.

1602.50 Requirement for filing and preserving copy of report.
1602.51 Penalty for making of willfully false statements on report.
1602.52 Commission's remedy for failure to file report.
1602.53 Exemption from reporting requirement.
1602.54 Additional reporting requirements.

Subpart Q—Records and Inquiries as to Race, Color, National Origin, or Sex

Sec.

1602.55 Applicability of State or local law.

AUTHORITY—Secs. 709(c) and 713(a), 86 Stat. 108, 78 Stat. 262, 42 U.S.C. (Supp II) § 2000e–8(c) and § 2000e–12(a), 29 C.F.R. 1602.3.

Subpart O—Recordkeeping for Institutions of Higher Education

§ 1602.47 Definition

Under subparts O and P of this part, the term "institution of higher education" means an institutional system, college, university, community college, junior college, and any other educational institution which offers an associate degree, baccalaureate degree or higher degree or which offers a two year program of college level studies without degree. The term "college level studies" means a post secondary program which is wholly or principally creditable toward a baccalaureate degree or terminates in an associate degree.

§ 1602.48 Records to be Made or Kept

Commencing August 1, 1975, every institution of higher education, whether public or private, with 15 or more employees, shall make or keep all records, and information therefrom, which are or would be necessary for the completion of Higher Education Staff Information Report EEO–6 whether or not it is required to file such a report under § 1602.50. The instructions for completion of Report EEO–6 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.* Such records, and the information therefrom, shall be retained at all times for a period of three years at the central administrative office of the institution of higher education, at the central administrative office of a separate campus or branch, or at an individual school which is the subject of the records and information, where more convenient. Such records, and the information therefrom, shall be made available if requested by the Commission or its representative under § 710 of Title VII and 29 U.S.C. § 161. It is the responsibility of every institution of higher education to obtain from the Commission or its delegate the necessary instructions in order to comply with the requirements of this section.

§ 1602.49 Preservation of Records Made or Kept

(a) Any personnel or employment record (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, tenure, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training) made or kept by an institution of higher education shall be preserved by such institution of higher education for a period of two years from the date of the making of the personnel action or record involved, whichever occurs later. In the case of the involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of termination. Where a charge of discrimination has been filed, or a civil action brought against an institution of higher education by the Commission or the Attorney General, the respondent shall preserve similarly at the central administrative office of the institution of higher education, at the central office of a separate campus or branch, or at the individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; it would also include application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final dispositoin of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in the United States District Court or, where an action is brought

*Note—Draft instructions were published as an appendix to the proposed regulations on May 7, 1974 (39 F.R.16159).

against an institution of higher education by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(b) The requirements of subsection (a) of this section shall not apply to undergraduate students of an institution of higher education who are employed part-time or temporarily by the institution of higher education or by a student organization sponsored by the institution of higher education. Nor shall the requirements of subsection (a) of this section apply to graduate students who are working part-time or temporarily in non-faculty positions for the institution of higher education or for a student organization sponsored by the institution of higher education or are working part-time in faculty positions in which work assignments are primarily for fulfilling the requirements of a degree more advanced than a bachelor's degree.

(c) The requirements of subsection (a) of this section shall not apply to application forms and other preemployment records of non-student applicants for positions known to non-student applicants to be of a temporary or seasonal nature.

Subpart P—Higher Education Staff Information Report

§ 1602.50 Requirement for filing and preserving copy of report.

On or before November 30, 1975, and biennially thereafter, every public and private institution of higher education having fifteen (15) or more employees shall file with the Commission or its delegate executed copies of Higher Education Staff Information Report EEO–6 in conformity with the directions set forth in the form and accompanying instructions. Every institution of higher education shall retain at all times, for a period of three years a copy of the most recently filed Report EEO–6 at its central administrative office, at the central office of a separate campus or branch, or at an individual school which is the subject of the report, where more convenient. An institution of higher education shall make the same available if requested by the Commission or its representative under the authority of § 710 of the Act and 29 U.S.C. § 161. It is the responsibility of the institutions above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

§ 1602.51 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO–6 is a violation of the United States Code, Title 18, § 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.52 Commission's Remedy for Failure to File.

Any institution of higher education failing or refusing to keep records, in accordance with §§ 1602.48 or 1602.49 of subpart O of this part, or failing or refusing to file Report EEO–6 when required to do so, in accordance with § 1602.50 of this part, may be compelled to keep records or to file by order of a United States District Court upon application of the Commission, or the Attorney General in a case involving a public institution.

§ 1602.53 Exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the institution of higher education may apply to the Commission for an exemption from the requirements set forth in subparts O and P of this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system no later than 45 days prior to the date on which the report must be filed.

§ 1602.54 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Higher Education Staff Information Report EEO–6, about the employment practices of private or public institutions of higher education whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in § 709(c) of Title VII and as otherwise prescribed by law.

Subpart Q—Records and Inquiries as to Race, Color, National Origin or Sex.

Section 1602.55 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts O, P, and Q of this part, supersede any provisions of State or local law which may conflict with them.

EEO—6 BK (9/74)

☆U.S. GOVERNMENT PRINTING OFFICE: 1975 O—576-700

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

HIGHER EDUCATION STAFF INFORMATION (EEO-6)

Public/Private Institutions and Campuses

GAO APPROVAL
B-180541 (RØ168)
EXPIRES 7-31-76*

(If your address is different from that on the label, complete Section I.A below.)

THIS INSTITUTION IS (Check one)
☐ PUBLIC ☐ PRIVATE

This is a joint requirement of the EEOC, Office for Civil Rights, H.E.W. and the Office of Federal Contract Compliance, Department of Labor. Mail original and three copies of this form to the address shown below by November 30, 1975.

*1977 Forms will require new information on "new hires."

I. IDENTIFICATION

A. INSTITUTION/CAMPUS OR SCHOOL

1. NAME				2. FICE CODE
3. STREET AND NUMBER/P.O. BOX	4. CITY/TOWN	5. COUNTY	6. STATE	7. ZIP CODE

B. REPORT COVERS

☐	1. SINGLE CAMPUS INSTITUTION	☐	2. MAIN CAMPUS OF A MULTICAMPUS INSTITUTION
☐	3. BRANCH CAMPUS OF A PARENT INSTITUTION	☐	4. ONE OF THE ADMINISTRATIVELY EQUAL CAMPUSES OF A MULTICAMPUS INSTITUTION
☐	5. SEPARATE ADMINISTRATIVE OFFICE OF A MULTICAMPUS INSTITUTION	☐	6. SEPARATE ADMINISTRATIVE OFFICE OF AN INSTITUTIONAL SYSTEM

7. OTHER (Specify)

C. PARENT INSTITUTION

1. NAME INSTITUTION OF WHICH THE BRANCH CAMPUS/SCHOOL/ADMINISTRATIVELY EQUAL CAMPUS OF A MULTICAMPUS INSTITUTION IS A PART

2. IF INSTITUTION IS PART OF AN INSTITUTIONAL SYSTEM, GIVE NAME OF SYSTEM

D. FEDERAL CONTRACT INFORMATION

1. INSTITUTION OR ADMINISTRATIVELY EQUAL UNIT HAS A CONTRACT/SUBCONTRACT WITH ANY U.S. GOVERNMENT AGENCY OF MORE THAN $10,000.
☐ YES ☐ NO

2. INSTITUTION OR ADMINISTRATIVELY EQUAL UNIT HAS A CONTRACT/SUBCONTRACT WITH ANY U.S. GOVERNMENT AGENCY FOR $50,000 OR MORE.
☐ YES ☐ NO

3. INSTITUTION OR ADMINISTRATIVELY EQUAL UNIT HAS A CONTRACT/SUBCONTRACT WITH ANY U.S. GOVERNMENT AGENCY WHICH TOGETHER WITH MODIFICATION TOTALS $1 MILLION OR MORE.
☐ YES ☐ NO

II. FULL TIME STAFF STATISTICS - OCCUPATIONAL ACTIVITY

(Use institution's definition of full time employment)

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	A. 9 - 10 MONTH CONTRACT SALARIES — NUMBER OF EMPLOYEES												
		MALE						FEMALE					
	TOTAL (Sum of cols B & H)	TOTAL (Sum of cols C – G)	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMER INDIAN OR ALASKAN NATIVE	TOTAL (Sum of cols I – M)	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMER INDIAN OR ALASKAN NATIVE
			WHITE	BLACK					WHITE	BLACK			
	A	B	C	D	E	F	G	H	I	J	K	L	M
1. EXECUTIVE/ ADMINISTRATIVE/ MANAGERIAL													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
1A. TOTAL													
2. FACULTY													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
2A. TOTAL													
3. PROFESSIONAL NON-FACULTY													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
3A. TOTAL													
4. SECRETARIAL/ CLERICAL													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
4A. TOTAL													

II. FULL TIME STAFF STATISTICS- OCCUPATIONAL ACTIVITY

(Use institution's definition of full time employment)

A. 9 - 10 MONTH CONTRACT SALARIES *(Cont.)*

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	NUMBER OF EMPLOYEES												
		MALE						FEMALE					
			NON-HISPANIC ORIGIN						NON-HISPANIC ORIGIN				
	TOTAL *(Sum of col. B & H)* A	TOTAL *(Sum of col. C—G)* B	WHITE C	BLACK D	HISPANIC E	ASIAN OR PACIFIC ISLANDERS F	AMER INDIAN OR ALASKAN NATIVE G	TOTAL *(Sum of col. I—M)* H	WHITE I	BLACK J	HISPANIC K	ASIAN OR PACIFIC ISLANDERS L	AMER INDIAN OR ALASKAN NATIVE M
5. TECHNICAL/ PARAPROFESSIONAL													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
5A. TOTAL													
6. SKILLED CRAFTS/													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
6A. TOTAL													
7. SERVICE/ MAINTENANCE													
BELOW $ 3,000													
$ 3,000 - 4,999													
5,000 - 7,499													
7,500 - 9,999													
10,000 AND ABOVE													
7A. TOTAL													
8. GRAND TOTAL													
B. OTHER													
1. FACULTY WITH LESS THAN 9-10 MONTH CONTRACTS													
C. 11 - 12 MONTH CONTRACT SALARIES													
1. EXECUTIVE/ ADMINISTRATIVE/ MANAGERIAL													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
1C. TOTAL													

II. FULL TIME STAFF STATISTICS - OCCUPATIONAL ACTIVITY

(Use institution's definition of full time employment)

C. 11 - 12 MONTH CONTRACT SALARIES *(Cont.)*

NUMBER OF EMPLOYEES

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	TOTAL (Sum of cols B & H) A	MALE						FEMALE					
		TOTAL (Sum of cols C–G) B	NON-HISPANIC ORIGIN		HISPANIC E	ASIAN OR PACIFIC ISLANDERS F	AMERICAN INDIAN OR ALASKAN NATIVE G	TOTAL (Sum of cols I–M) H	NON-HISPANIC ORIGIN		HISPANIC K	ASIAN OR PACIFIC ISLANDERS L	AMERICAN INDIAN OR ALASKAN NATIVE M
			C WHITE	D BLACK					I WHITE	J BLACK			
2. FACULTY													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
2C. TOTAL													
3. PROFESSIONAL NON-FACULTY													
BELOW $ 7,500													
$ 7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 - 18,999													
19,000 - 24,999													
25,000 - 29,999													
30,000 AND ABOVE													
3C. TOTAL													
4. SECRETARIAL/ CLERICAL													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
4C. TOTAL													
5. TECHNICAL/ PARAPROFESSIONAL													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
5C. TOTAL													
6. SKILLED CRAFTS													
BELOW $ 5,000													
$ 5,000 - 7,499													
7,500 - 9,999													
10,000 - 12,999													
13,000 - 15,999													
16,000 AND ABOVE													
6C. TOTAL													

II. FULL TIME STAFF STATISTICS - OCCUPATIONAL ACTIVITY

(Use institution's definition of full time employment)

C. 11 - 12 MONTH CONTRACT SALARIES *(Cont.)*

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	NUMBER OF EMPLOYEES												
		MALE						FEMALE					
	TOTAL *(Sum of cols. B & H)*	TOTAL *(Sum of cols. C - G)*	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMERICAN INDIAN OR ALASKAN NATIVE	TOTAL *(Sum of cols. I - M)*	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE	BLACK					WHITE	BLACK			
	A	B	C	D	E	F	G	H	I	J	K	L	M
7. SERVICE/ MAINTENANCE													
BELOW $ 3,000													
$ 3,000 - 4,999													
5,000 - 7,999													
8,000 - 9,999													
10,000 AND ABOVE													
7C. TOTAL													
8. GRAND TOTAL													

D. ADDITIONAL INFORMATION

1. PERSONS REPORTED IN *Sec. II. A1 and II. C1.* WITH ACADEMIC RANK AND/OR TENURE												
2. FULL TIME STAFF PAID IN FULL FROM "SOFT MONEY" SOURCES												
3. TOTAL ALL FOREIGN NATIONALS												

III. FULL TIME FACULTY BY RANK AND TENURE

(Count only once)

A. TENURED												
1. PROFESSORS												
2. ASSO. PROFESSORS												
3. ASST. PROFESSORS												
4. INSTRUCTORS												
5. LECTURERS												
6. OTHER FACULTY												
7. TOTAL												
B. NON-TENURED ON TRACK												
8. PROFESSORS												
9. ASSO. PROFESSORS												
10. ASST. PROFESSORS												
11. INSTRUCTORS												
12. LECTURERS												
13. OTHER FACULTY												
14. TOTAL												
C. OTHER NON-TENURED												
15. PROFESSORS												
16. ASSO. PROFESSORS												
17. ASST. PROFESSORS												
18. INSTRUCTORS												
19. LECTURERS												
20. OTHER FACULTY												
21. TOTAL												

IV. OTHER EMPLOYMENT DATA

PRIMARY OCCUPATIONAL ACTIVITY	NUMBER OF EMPLOYEES												
		MALE						FEMALE					
	TOTAL (Sum of cols B & H)	TOTAL (Sum of cols C–G)	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMERICAN INDIAN OR ALASKAN NATIVE	TOTAL (Sum of cols I–M)	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDERS	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE	BLACK					WHITE	BLACK			
	A	B	C	D	E	F	G	H	I	J	K	L	M
PART TIME													
1. EXEC/ADMIN/ MANAGERIAL													
2. FACULTY													
A. TENURED													
B. NON-TENURED ON TRACK													
C. OTHER NON-TENURED													
3. PROFESSIONAL NON-FACULTY													
4. SECRETARIAL/ CLERICAL													
5. TECHNICAL PARA-PROFESSIONAL													
6. SKILLED CRAFT													
7. SERVICE/ MAINTENANCE													
8. TOTAL													
NEW HIRES (Full time between 1 July & 30 Sept)													
9. EXEC/ADMIN/ MANAGERIAL													
10. FACULTY A. TENURED													
B. NON-TENURED ON TRACK													
C. OTHER NON-TENURED													
11. PROFESSIONAL NON-FACULTY													
12. SECRETARIAL/ CLERICAL													
13. TECHNICAL PARA-PROFESSIONAL													
14. SKILLED CRAFT													
15. SERVICE/ MAINTENANCE													
16. TOTAL													

OMIT IN 1975

REMARKS

CERTIFICATION: I certify that the information given in this report is correct and true to the best of my knowledge and was prepared in accordance with accompanying instructions. *(Willfully false statements on this report are punishable by law. U.S. Code, Title 18, Section 1001).*

DATE	TELEPHONE NUMBER (Include area code)	TYPED NAME/TITLE OF PERSON PREPARING/ CERTIFYING REPORT	SIGNATURE

APPENDIX VII.

MEMORANDUMS TO COLLEGE AND UNIVERSITY PRESIDENTS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

August 1975

MEMORANDUM TO COLLEGE AND UNIVERSITY PRESIDENTS

Executive Order 11246, as amended, prohibits discrimination in employment against persons on the basis of race, color, religion, sex, or national origin on the part of colleges and universities which hold Federal contracts. In addition, the Executive Order requires that such colleges and universities take "affirmative action" to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

As the Federal agency with responsibility for overseeing Government-wide enforcement of the Executive Order, the Department of Labor (DOL) has promulgated regulations to implement the Order and has delegated to the Department of Health, Education, and Welfare (DHEW) the responsibility for assuring that colleges and universities comply with those regulations. Among the regulations promulgated by DOL are those which; (1) require that Federal contractors develop written affirmative action compliance programs (41 CFR 60-1.40), (2) provide detailed guidance to Federal contractors in developing these programs (41 CFR 60-2 - known as Revised Order #4), and (3) provide detailed guidance to the Federal enforcement agencies such as DHEW in evaluating contractors' written affirmative action compliance programs and conducting compliance reviews (41 CFR 60-60 - known as Revised Order #14).

In June 1975, the Office for Civil Rights (the unit within DHEW which is responsible for enforcing the DOL regulations with institutions of higher education) issued a proposed "Conciliation Agreement" incorporating its interpretation of the requirements of the DOL regulations as they apply to colleges and universitites. Since that time, officials of DOL and DHEW have had extensive discussions concerning the application of the DOL regulations to colleges and universities and particularly the application of Revised Order #4.

As a result of these discussions and DOL's evaluation of DHEW's proposed "Conciliation Agreement," DOL has developed and provided to DHEW the attached "Format for Development of An Affirmative Action Plan by

Institutions of Higher Education." DOL has emphasized to DHEW and has asked DHEW to emphasize to college and universities that the "format" is only one approach to satisfy the requirements of Revised Order #4 and that any institution may adopt other approaches to presenting their affirmative action plans so long as they are consistent with the regulations.

Under the DOL "Format" every affirmative action plan must contain the following basic elements: a work force analysis, a utilization analysis, and goals and timetables including "specific and detailed action oriented programs." Whether, and to what extent, any additional elements are required to be included in the affirmative action plan of a particular institution will depend on two factors: (1) what is indicated by the work force and utilization analyses, and (2) the findings of any compliance review conducted by DHEW pursuant to Revised Order #14. As to the first factor, if it is readily apparent from the work force and utilization analyses or if an institution determines upon review of these analyses that there are specific problems requiring further analysis and/or corrective action, the affirmative action plan will not be acceptable unless the appropriate analyses and/or corrective action are detailed in the plan. As to the second factor, if any compliance reviews or other investigations conducted by DHEW reveal specific problems requiring further analyses and/or corrective actions, such must be included in the institution's affirmative action plan in order for it to be found acceptable.

Finally, pursuant to this "Format," in determining whether an institution has made "good faith efforts" to correct deficiencies, within the meaning of 41 CFR 60-2.10, DHEW must examine whether the institution has conducted analyses necessary to permit the identification of deficiencies through either of the methods discussed above and implemented the corrective actions.

We hope that this "Format" will facilitate compliance with the Executive Order by colleges and universities and that it will clarify their obligations under Revised Order #4. In determining whether institutions of higher education are in compliance with Revised Order #4, we shall immediately begin to consider whether their affirmative action plans, as a minimum, comport with this "Format."

Martin Gerry

Martin H. Gerry
Acting Director
Office for Civil Rights

FORMAT FOR DEVELOPMENT OF AN AFFIRMATIVE ACTION PLAN BY INSTITUTIONS OF HIGHER EDUCATION

On December 4, 1971, the Office of Federal Contract Compliance (OFCC), U. S. Department of Labor, issued regulations regarding contractor's obligations to develop Affirmative Action Programs (41 CFR Part 60-2, known as Revised Order No. 4). Several revisions and amendments have been made to those regulations since that time.

These regulations, because they apply to all contractors, regardless of industry or geographic location, are of necessity, general in nature. Because there are unique problems in certain industries, whole industries or multi-facility contractors often will want to adopt national formats. The regulations provide for agreements between government and industry applying the basic requirements of Order No. 4 to individual industry or company situations. (See 41 CFR 60-60.3)

The following format applies the requirements of Order No. 4 to colleges and universities. The format is an approved method for development and implementation of affirmative action programs in the University setting. Universities may choose, however, to continue the use of job groupings, analytical

procedures and goal setting techniques which depart from this format, provided such departures are not in violation of Order No. 4.

Attaining the objectives of equal employment opportunity in higher education requires affirmative action programs that reflect both the characteristics of these institutions as a group, and the substantial variations among them. The development, maintenance and improvement of high-quality academic faculties is a vital, complex, and often fragile process. Affirmative action can be a positive assistance in developing and strengthening the quality of academic faculties. This format, intended only to provide relatively detailed guidance concerning the application of 41 CFR Part 60-2 to higher education institutions, should be understood and implemented within this framework of objectives.

Industry Format--Colleges and Universities.

A. Work force Analysis.

A work force analysis is basic to the adequacy of any program, and forms the foundation from which the university develops its subsequent actions. This requirement is contained in 41 CFR 60-2.11(a)

(as revised), which states:

> Workforce analysis ... is defined as a listing of each job title as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges. For each job title the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals.* The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles must be listed.

On May 29, 1975, the Equal Employment Opportunity Commission published in final form the Higher Education Staff Information Report (EEO-6), a joint requirement of the EEOC, Office for Civil Rights, HEW, and the

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* Minority group titles from EEO-1. EEO-6 minority titles may be used instead.

Office of Federal Contract Compliance. This report requires certain job groupings within EEO-6 primary occupational activities by wage or salary intervals. Such report must initially be made by all public and private institutions and campuses in November 1975.

To minimize workload for the university, an acceptable method of arranging data is by title, by appropriate organizational unit within these EEO-6 categories. Since EEO-6 will not be operational until November 1975, as an acceptable alternate, universities may arrange data by job title, by appropriate organizational unit, within EEO-1 categories until January 1, 1976, provided salary data is included. If EEO-6 categories are used, the work force array should be shown by salary steps within each title in each category. (If salary information is separately programmed, such data may be submitted in a separate document, provided the job titles and organizational units are arranged similarly to the work force display.)

Two major groupings of jobs must be considered: Faculty and Other Instructional Staff, and Non-Instructional Positions.

(a) Faculty and Other Instructional Staffs.

All persons in this major group fall in the EEO-6 category Faculty or EEO-1 category Professional. Each faculty or other instructional position must be presented by department, with the following sub-categories:

(1) Ladder Rank Faculty

(2) Non-Ladder Rank Instructional Staff (non-student)

(3) Student Teaching Assistants

If chairman is a separate title, this job title must be listed. The analysis should indicate whether the incumbents are tenured or non-tenured. (See Attachment 1)

(b) Non-Instructional Positions.

These positions fall in EEO-6 categories Executive/Administrative/Managerial, Professional Non Faculty, Office and Clerical, Technical and Paraprofessional, Crafts, Service and Maintenance, or equivalent EEO-1 categories. Job titles in each category must be shown by department or other organizational unit for ease of comparison with availability data. Student Research Assistants must also be shown. In those cases where there are formal

lines of progression (which may cover more than one EEO-6 category), the individual job titles must be listed in such progression order. So far as feasible, all other job titles should be listed in order of EEO-6 salary groupings and such groupings identified for each title. In those cases in which salary ranking of titles is not feasible, due to wide variations of the salaries of incumbents in individual titles, some other method of ordering may be adopted. Attachment 2 reflects an acceptable work force display by EEO-6 category; Attachment 3 reflects an acceptable arrangement for progression line jobs.

B. Availability and Utilization Analysis.

The second basic requirement in all affirmative action programs is the utilization analysis. Such an analysis consists of combining non-student job titles into job groups, determining the availability of minorities and women for each such group, in light of skill requirements, recruitment area, promotable individuals, etc., and then determining if minorities and women in job groups correspond to their availability. (See 41 CFR 60-2.11(b), as revised)

The following approach to the utilization analyses is suggested:

(1) Combining Job Titles and Departments Into Job Groups.

(a) Faculty and Other Instructional Positions (Non-Student)

Departments having similar disciplines should generally be combined. Department size and institutional organizations will vary, but aggregations of departments should usually be based on factors of common administrative control (e.g., under a single Dean) and relatedness of academic discipline and similarity in percentage of female or minority availability. An example of an appropriate aggregation would be "Physical Sciences," which could include the following departments:

Astronomy
Astrophysics
Chemistry
Geology
Physics

In addition, a more specific, or secondary job grouping, within the primary aggregation, is also essential. Secondary job groupings must be divided as indicated below, and may be further subdivided in order to reflect institutional employment patterns.

(1) Ladder Rank Faculty

(2) Non Ladder Rank Instructional Staff (non-student)

(b) Non-Instructional Positions.

To further minimize the university workload, and to facilitate data processing, the primary and secondary job groupings, used in EEO-6, will satisfy the requirements of 41 CFR 60-2.11(b) (as amended) as it applies to non-instructional positions. In this regard the primary job groupings are:

1. Executive/Administrative/Managerial
2. Professional Non Faculty
3. Secretarial/Clerical
4. Technical/Paraprofessional
5. Skilled Crafts
6. Service/Maintenance

As a further example, the secondary job groups for Secretarial/clerical are:

(a) Below $5,000
(b) $5,000 - $7,499
(c) $7,500 - $9,999
(d) $10,000 - $12,999
(e) $13,000 - $15,999
(f) $16,000 and Above

Alternately, institutions may form within EEO categories, groups of related job titles, provided each title is placed in one of these job groupings. Because availability will vary depending on profession, Professional Non Faculty job grouping should be by department or other organizational unit(s) which reflect similarity of availability. Other primary and secondary job

groupings may be grouped university wide rather than subdivided within organizational units unless a significant disparity of utilization is identified.

(2) Determining Availability and Under-utilization.

For each of the job groups for both faculty and non-instructional positions, a comparison must be made of the percentage of each minority and total women available in the appropriate recruiting area having requisite skills for the group compared, considering all the factors in 41 CFR 60-2.11(b). Whenever the percentage of such persons available in that job group is less than the percentage available within the applicable labor area, the affirmative action program must specifically state that under-utilization exists in that group.

(a) Faculty and Other Instructional Positions.

While availability of complete data remains a problem, both HEW and DOL are working to develop improved data. In addition, as data from EEO-6 submissions are obtained and consolidated, such information will be a significant aid to universities in their availability analysis. The university should develop the best possible information based upon a

variety of sources available using all factors in 41 CFR 60-2.11(b). In addition, the following sources should be consulted:

(1) "Summary Report 1973 Doctorate Recipients from United States Universities" prepared by the Commission on Human Resources, National Academy of Sciences, May 1974. This survey is annual, 2,500 copies are printed and one is distributed to each graduate Dean. Other copies are available free upon request while the supply lasts. The survey for 1974 is in press.

(2) 1973 Survey of Doctoral Scientists and Engineers from the Roster of Doctoral Scientists and Engineers. Included in Doctoral Scientist and Engineers in the United States: 1973 Profile. Published by the Commission on Human Resources, National Academy of Sciences. Available upon request.

(3) Professional Women and Minorities: A Manpower Data Resource Service prepared by Betty M. Vetter and Eleanor L. Babco of the Scientific Manpower Commission, 1776 Massachusetts Avenue, N.W., Washington, D.C. 20036. (This is a complete survey and summary of sources of availability data for professional women and minorities, available for a charge in a loose-leaf notebook with updating service.)

All the foregoing sources provide information on social sciences, humanities and some professional fields, in addition to the physical and biological sciences and engineering.

For women, Earned Degrees Conferred, an annual publication by the U. S. Office of Education, should be consulted. Currently, such data is shown by sex, but not by race, and is reported both by individual discipline and, in some cases, by sub-field within the discipline.

One acceptable compilation of availability data for women for faculty positions requiring the doctorate is presentation of the number and percent of women doctorate recipients in feeder institutions by major field for the most recent 3-5 year period for which data are available. "Availability" in such a compilation will be the percent of women doctorate recipients by field in those institutions taken together. "Feeder Schools" are those graduate schools from which the university normally hires, and may be defined by the university, so long as the selection is not limited to institutions admitting disproportionate numbers of one sex or the other. (See Attachment 4)

Until comparable data for minorities as that for women are available, one acceptable compilation of availability data for minorities for faculty positions requiring the doctorate, is presentation by general field (e.g., social science) of the average

of (a) the percentage of minority recipients of the doctorate in the most recent year for which data are available (see Item 1 above), and (b) the percentage of minorities of total holders of the doctorate in a recent year (see Item 2 above). For format, see Attachment 5.

For faculty positions not requiring a Ph.D., surveys of female and minority college graduates, with and/or without advanced degrees, should be reviewed. In addition, Table 3 of the State Employment Service Guidelines furnishes percentages of teachers and administrators in elementary and secondary schools which may be of some assistance.

(b) Non-Instructional Positions.

In determining availability of minorities and women for non-instructional positions, all criteria listed in 41 CFR 60-2.11 should be analyzed.

Analysis should also consider local State Employment Security Agencies' Manpower Information for Affirmative Action Programs data which is now available in most localities. The specific figures shown in Tables I, II, and III in those releases can be used in the analysis of population, work force, unemployment, skill availability. Current occupations of employed persons indicated in Table III should be

considered a minimum basis for utilization, but additional opportunities afforded through training and recruitment should also be considered. When other data are available for specific skills, they may be used.

The labor market in which the university normally recruits should be considered in identifying appropriate geographical area.

C. Goals and Timetables.

Where underutilization exists, and the increase in the number of persons in a job group necessary to eliminate underutilization is .5 persons or greater, each program must contain goals which satisfy each of the following requirements:

(1) Ultimate Goals.

An ultimate goal must be established for each job group in which underutilization exists and must be designed to correct the underutilization by the application of every good faith effort. The ultimate goal must be stated as (a) a percentage of the total employees in the job group and must be equal to the percentage of minorities or women available for work in the job group in the applicable labor market, and (b) a whole number, representing the total minority

and total women necessary to be employed to reach full utilization.

A single goal for minorities for each job group is acceptable, unless, through the university's evaluation it is determined that one minority is underutilized in a substantially disparate manner, to other minority groups, in which case separate goals and timetables for such minority groups may be required individually. It may further be required, where appropriate, that separate goals be established within the minority group by sex. (See 41 CFR 60-2.11(k)) For example, if a department or group significantly underutilizes one or more minority groups, but not all, the goal must address itself to the particular group or groups underutilized and is not satisfied by hiring additional minorities from ethnic groups not underutilized.

(2) Interim Goals.

(a) Faculty and Other Instructional Staff Job Groups.

Because availability of minorities or women is very low and the projected number of opportunities, due to low turnover and lack of expansion, for each year, is limited, annual goals often result in small

numbers. For each faculty and other instructional staff job group in which underutilization exists, the university must project rates of hiring and/or promoting minorities and women until underutilization is eliminated. However, these rates may be established for three-year periods unless special circumstances, such as the expectancy of high turnover and significant availability warrant the establishment of shorter term interim goals.

Compliance officers shall evaluate the success or failure to meet these goals at the end of each three-year period (or lesser period, if applicable). However, there must be good faith hiring efforts year by year. These rates should be the maximum rates that can be achieved through putting forth every good faith effort, including the use of available recruitment and training facilities, and must not be lower than the percentage rates set as representing the percentage availability of women and minorities in the applicable labor market.

(b) Non-Instructional Job Groups.

Annual goals must be established for all job groups where underutilization exists. Such goals should reflect the maximum hiring and/or promotion

rathes that can be achieved through putting forth every good faith effort and must not be lower than the ultimate goal.

(3) Timetables.

(a) Faculty and Other Instructional Staff Job Groups

In the case of faculty and other instructional staff job groups, because of small sizes of job units, slow rates of turnover due to tenure, and difficulties in projecting trends in minority and female supply, timetables will often represent both very rough estimates and long durations of time. For these reasons, timetables which reach beyond six years for reaching full utilization are not required for these job groups. The university must commit itself to at least annual review and updating of goals and timetables until underutilization is eliminated and it is expected that as additional minorities and females come into the labor market, the timetables will be shortened.

(b) Non-Instructional Job Groups.

For each non-instructional job group in which underutilization exists, a specific timetable must be established which projects the minimum

feasible time period for eliminating under-utilization.

(4) In all cases, determination of availability and adequacy of goals must be reviewed annually in order to give full consideration to changes in minority and female supply.

(5) Each program must contain specific and detailed action oriented programs, including recruitment and training programs, which comply with Revised Order No. 4. Among other requirements, these programs must commit the university to undertake every good faith effort to contact and make use of relevant recruitment and training resources available in the community and to use its own resources for recruiting and training minorities and women to fill positions in job groups where underutilization exists.

(6) An acceptable format for displaying utilization data and goals for faculty and other instructional staff is shown in Attachment 6. A format for non-instructional employees is shown in Attachment 7.

(D) Implementation of an Affirmative Action Program.

Revised Order No. 4 sets forth the mandatory contents of written affirmative action programs in

Subpart B ("Required Contents of Affirmative Action Programs"). Each affirmative action program (AAP) must contain the elements described in that Subpart, although there may be some variation from contractor to contractor, based on variations in personnel structure and employment practices.

One important part of an AAP is the identification of problem areas (see para. 60-2.13(d)). The primary tools for identification of problem areas are the work force analysis and the utilization analysis. These statistics should reveal areas where minorities or women are concentrated or are not working, as well as disparities in compensation and awarding of tenure. Other problem areas may come to the university's attention through other means, such as complaints of disparities in research grants or teaching assignments.

Once a university determines that a problem exists, it should attempt to identify the sources of the problem, and take appropriate action to correct it. A contractor's good faith efforts under para. 60-2.10 will be judged, in part, on whether such an investigation and corrective action have been undertaken to implement the AAP.

An AAP, however, is only a document with no substance unless it is fully implemented. After

setting forth what must be included in each AAP, therefore, Order No. 4 continues: "There follows as outlines of examples of procedures that contractors and Federal agencies should use as a guideline for establishing and implementing and judging an acceptable affirmative action program." (Para. 60-2.14) In general, Subpart C, entitled "Methods of Implementing the Requirements of Subpart B" is designed to give guidance and provide examples of methods of taking corrective action to deal with problem areas identified in the AAP itself. It is not intended to impose specific mandatory requirements on all contractors without regard to the existence of identified problems. Furthermore, nothing in Subpart C should be construed as requiring institution-wide presentation in the AAP of statistical data developed as a means of investigating the cause of specific problems.

DATED: August 18, 1975

Martin H. Gerry

Martin H. Gerry
Acting Director
Office for Civil Rights

WORK FORCE ANALYSIS--FACULTY AND OTHER INSTRUCTIONAL STAFF

ATTACHMENT 1

DEPARTMENT

JOB TITLES	SALARY CODE	LADDER RANK Yes No	NUMBER OF EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE	TOTAL TENURED EMPLOYEES: TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK MALE	BLACK FEMALE	HISPANIC MALE	HISPANIC FEMALE	ASIAN MALE	ASIAN FEMALE	AM. INDIAN MALE	AM. INDIAN FEMALE
Professor	E	Yes																						
	F	Yes																						
	G	Yes																						
	H	Yes																						
Assoc. Professor	D	Yes																						
	E	Yes																						
	F	Yes																						
Asst. Professor	C	No																						
	D	No																						

SALARY CODE--USE EEO-6
SALARY INTERVAL

A--Below $ 7,500
B--$ 7,500 -
C-- 10,000 - 12,999
D-- 13,000 - 15,999
E-- 16,000 - 18,999
F-- 19,000 - 24,999
G-- 25,000 - 29,999
H-- 30,000 and Above

CONVERT ALL SALARIES TO COMMON PAY BASIS

WORK FORCE ANALYSIS--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 2

EEO-6 CATEGORY

ORGANIZATIONAL UNIT

JOB TITLES	SALARY CODE	NUMBER OF EMPLOYEES												
		TOTAL - ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	

SALARY CODES

3. PROFESSIONAL NON-FACULTY

Codes
- A Below $ 7,500
- B $ 7,500 - 9,999
- C 10,000 - 12,999
- D 13,000 - 15,999
- E 16,000 - 18,999
- F 19,000 - 24,999
- G 25,000 - 29,999
- H 30,000 and Above

3A. TOTAL

4. SECRETARIAL/ CLERICAL

Codes
- A Below - $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

4A. TOTAL

CONVERT ALL SALARIES TO COMMON PAY BASIS

5. TECHNICAL/ PARAPROFESSIONAL

Codes
- A Below $ 5,000
- B 5,000 - 7,499
- C 7,500 - 9,999
- D 10,000 - 12,999
- E 13,000 - 15,999
- F 16,000 and Above

5A. TOTAL

7. SERVICE/ MAINTENANCE

Codes
- A Below - $ 3,000
- B 3,000 - 4,999
- C 5,000 - 7,499
- D 7,500 - 9,999
- E 10,000 and Above

7A. TOTAL

WORK FORCE ANALYSIS--NON INSTRUCTIONAL: FORMAL LINES

ATTACHMENT 3

Power House
DEPARTMENT OR UNIT

JOB TITLES	WAGE	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	NUMBER OF EMPLOYEES								
					BLACK		HISPANIC		ASIAN		AM. INDIAN		
					MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Foreman	$ 7.32	1											
Operator	6.90	4											
Assistant Operator	6.30	4											
Attendant, Boiler #1	5.95	4											
Attendant, Boiler #2	5.75	4											
Helper, 1st Boiler	4.87	4											
Helper, 2nd Boiler	4.72	4											
Utility Man	4.25	2											
Spare Hand	4.15	2											

Minority Definitions are same as those in Instructions to EEO-6

ATTACHMENT 4

General Discipline	A: MINORITY RECIPIENT OF THE DOCTORATE--1973										B: MINORITY HOLDERS OF DOCTORATE IN A RECENT SAMPLE YEAR										AVERAGE OF PERCENT FROM A and B
	Total	Percent	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Nat. Am. #	Nat. Am. %	Total	Percent	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Nat. Am. #	Nat. Am. %	

GOALS--FACULTY AND OTHER INSTRUCTIONAL STAFF (NON-STUDENT)

ATTACHMENT 5

DEPARTMENT OR GROUP

	CURRENT EMPLOYMENT										AVAILABILITY (GOAL)				TIMETABLE (IF APPROPRIATE)		
		LADDER RANK				OTHER INSTRUC.											
		MALE		FEMALE			MALE		FEMALE								
	TOTAL	#	%	#	%	TOTAL	#	%	#	%	PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY (Years to Goal)	FEMALE (Years to Goal)	

DOCTORATES AWARDED TO WOMEN
(Major Field, e.g., English, Physics)

ATTACHMENT 6

INSTITUTION	1967-68			1968-69			1969-70			1970-71			TOTAL		PERCENT
	M	F	%F	M	F	%F	M	F	%F	M	F	%F	M	F	F
TOTAL													*		**

Data Source:
Earned Degrees Conferred

* Total doctorates granted men and women, all listed institutions, all listed years (e.g., 1967-71)

** Percent of doctorates granted women for listed institutions, listed years. This is overall availability figures

GOALS AND TIMETABLES--NON-INSTRUCTIONAL POSITIONS

ATTACHMENT 7

EEO-6 CATEGORY

SALARY GROUP	CURRENT EMPLOYMENT											AVAILABILITY (FINAL GOAL)				ANNUAL GOAL				TIMETABLES	
	TOTAL ALL	TOTAL FEMALE	TOTAL MINORITY	BLACK		HISPANIC		ASIAN		AM. INDIAN		PERCENT MINORITY	# MINORITY TO GOAL	PERCENT FEMALE	# FEMALE TO GOAL	MINORITY		FEMALE		MINORITY	FEMALE
				MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE					NUMBER	% OF OPPORTUNITY	NUMBER	% OF OPPORTUNITY	YEARS TO FINAL GOAL	YEARS TO FINAL GOAL

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

November 1975

MEMORANDUM TO COLLEGE AND UNIVERSITY PRESIDENTS

In August 1975 the Office for Civil Rights, Department of Health, Education and Welfare, distributed a Memorandum to College and University Presidents which transmitted the newly developed Department of Labor "Format for Development of an Affirmative Action Plan by Institutions of Higher Education." Attachments one through seven to the "Format" are suggested tables for displaying data in an Affirmative Action Plan. Inadvertently, the race/ethnic categories shown in the tables were not updated to conform to the recent interagency agreement and the definitions for the categories were omitted.

The attached Report prepared by the Federal Interagency Committee on Education (FICE) defines the basic five race/ethnic categories which will be used for statistical reporting and suggests methods for collecting and presenting such data.

The race/ethnic categories as shown in the FICE Report have been accepted for all reporting purposes by the Equal Employment Opportunity Commission, the Department of Labor and the Department of Health, Education and Welfare and data on these categories will be required for all other survey and compliance reports where statistics on students or employees are gathered.

Peter E. Holmes
Director
Office for Civil Rights

FEDERAL INTERAGENCY COMMITTEE ON EDUCATION

FICE REPORT...

Chairman, Virginia Y. Trotter
Assistant Secretary for Education

Volume 2, Number 1 May 1975

RACIAL/ETHNIC CATEGORIES

Terms and definitions of five basic categories for collecting, maintaining and reporting racial and ethnic data have been endorsed by the Federal Interagency Committee on Education (FICE).

These categories, which are shown below, represent the culmination of ten months of work by the FICE Ad Hoc Committee on Racial and Ethnic Definitions. The Committee's assigned task was to develop common racial and ethnic definitions for use by all Federal agencies to assure collection and reporting of racial and ethnic educational data on a compatible and nonduplicative basis.

The five basic categories are these:

1. American Indian or Alaskan Native: A person having origins in any of the original peoples of North America.

2. Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

3. Black/Negro: A person having origins in any of the black racial groups of Africa.

4. Caucasian/White: A person having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent.

5. Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

The FICE Ad Hoc Committee has recommended that these categories be validated through field testing, then modified if necessary. When this step has been completed, the Chairman of FICE will transmit the categories to the

Office of Management and Budget (OMB) with the recommendation that they be promulgated throughout the Federal government as a standard to be used whenever an agency collects or reports data about race and/or ethnicity.

The report of the Ad Hoc Committee points out that there are two ways to obtain racial and ethnic information: observer-identification and self-identification. The Committee noted that, when possible, it is preferable to have an individual identify his racial or ethnic background himself. When this is not feasible, as in civil rights compliance surveys, an observer's determination of individuals' racial or ethnic heritage must be accepted.

Following are two illustrations of how the five basic categories can be applied in data collection formats.

ALTERNATIVE METHODS OF COLLECTING DATA

A. One question, mutually exclusive categories

Racial/Ethnic Information

___ Hispanic
___ American Indian or Alaskan Native
___ Asian or Pacific Islander
___ Black/Negro, not of Hispanic origin
___ Caucasian/White, not of Hispanic origin

B. Two questions, one racial, one ethnic

1. What is your racial background ?

___ American Indian or Alaskan Native
___ Asian or Pacific Islander
___ Black/Negro
___ Caucasian/White

2. Is your ethnic heritage Hispanic?

___ Yes ___ No

The five mutually exclusive categories of Alternative A are particularly suitable for observer identification.

OMB, the HEW Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the General Accounting Office (GAO) have agreed that OCR and EEOC will use Alternative A, omitting the words "Negro" and "Caucasian," for collection of 1975-76 compliance data.

The two-question approach of Alternative B, which relies upon self-identification, provides greater flexibility for interchange of data because figures can be tabulated a number of different ways without double counting.

If Alternative B is used, nonduplicated data may be obtained for all cells in the following matrix. By combining cells, data may be made available for the categories of Alternative A.

MATRIX FOR PRESENTATION OF SUMMARY DATA

RACIAL GROUP	HISPANIC	NOT HISPANIC	TOTAL
American Indian or Alaskan Native			
Asian or Pacific Islander			
Black/Negro			
Caucasian/White			
TOTAL			

The Ad Hoc Committee recognized that needs may arise to subdivide the five basic categories. While not attempting to identify all possible ethnic groups within any category, the Committee has offered the following illustrations:

- The "American Indian or Alaskan Native" category could have an additional question asking for tribal affiliation and/or Alaskan Native group (Aleuts, Eskimos).
- The "Asian and Pacific Islander" category may be broken into subcategories "Chinese, Japanese, Korean, Filipino, Vietnamese, Samoan," etc.
- The "Caucasian/White" category may be subdivided into such subgroups as "Portuguese, French-Canadian, Italian, Asian Indian," etc.
- If the identified subgroups do not cover all possible subgroups in the major category, the final subgroup should be "Other (name of category) _____" or "Other (specify) _____."

Data within major categories may be combined as needed, but data from one major category may never be combined with data from any other major category without loss of comparability.

These categories should not be interpreted as scientific or anthropological in nature. Neither are they intended to be viewed as determinants of eligibility for participation in any Federal program. They were developed in response to needs expressed by both the Executive Branch and the Congress to provide for the collection and use of compatible, nonduplicated, exchangeable racial and ethnic data by Federal agencies. The work of the Ad Hoc Committee and the endorsement of it by FICE represent an important step forward in this area.

APPENDIX VIII. PRE-EMPLOYMENT INQUIRIES AND EQUAL EMPLOYMENT OPPORTUNITY LAW

EEOC AND TITLE VII

The U.S. Equal Employment Opportunity Commission (EEOC) was established to ensure compliance with Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. Title VII prohibits discrimination in employment because of race, color, religion, sex or national origin and covers all private employers, state and local governments, educational institutions, labor organizations, and joint labor-management apprenticeship programs, with 15 or more employees or members, as well as all public and private employment agencies. Through its Voluntary Programs staff, the EEOC furnishes technical and educational assistance to aid voluntary compliance with the law.

THE COMMISSION

Ethel Bent Walsh
Vice Chairman

Colston A. Lewis
Commissioner

Daniel E. Leach
Commissioner

Abner W. Silbal
General Counsel

PRE-EMPLOYMENT INQUIRIES

Employment application forms and pre-employment interviews have traditionally been instruments for eliminating, at an early stage, "unsuited" or "unqualified" persons from consideration for employment and often have been used in such a way as to restrict or deny employment opportunities for women and members of minority groups.

The law, interpreted through court rulings and EEOC decisions, prohibits the use of all pre-employment inquiries and qualifying factors which disproportionately screen out members of minority groups or members of one sex and are not valid predictors of successful job performance or cannot be justified by "business necessity."[1]

In devising or reviewing application forms or in seeking information from job applicants, employers should ask themselves: (1) Will the answers to this question, if used in making a selection, have a disparate effect in screening out minorities and/or members of one sex (i.e. disqualify a significantly larger percentage of members of a particular group than others)? (2) Is this information really needed to judge an applicant's competence or qualification for the job in question?

[1] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

BUSINESS NECESSITY AND JOB RELATEDNESS

The concept of business necessity has been narrowly defined by the courts. When a practice is found to have dicriminatory effects, it can be justified only by showing that it is necessary to the safe and efficient operation of the business, that it effectively carries out the purpose it is supposed to serve and that there are no alternative policies or practices which would better or equally well serve the same purpose with less discriminatory impact.[2]

An employer should be able to demonstrate through statistical evidence that any selection procedure, which has a "disparate effect" on groups protected by the law, is job related, i.e. validly predicts successful performance in the type of job in question. If this cannot be shown or if the employer cannot or does not wish to perform a technical validation study, the use of that procedure should be discontinued or altered in such a way that there is no longer a discriminatory effect.[3] Even when a procedure having an adverse impact can be validated, it may not be used if there are other procedures which would accomplish the same goal and have less of a discriminatory effect.

SPECIFIC ISSUES ADDRESSED BY COURT AND EEOC DECISIONS

[2]*Griggs v. Duke Power Co.*, supra.; *Robinson v. Lorillard Corp.*, 444 F. 2d 791 (C.A. 4, 1971); *U.S. v. St. Louis-San Francisco R.R. Co.*, 464 F. 2d 301, 308 (C.A. 8, 1972); *Jones v. Lee Way Motor Freight, Inc.*, 431 F. 2d 245 (C.A. 10, 1970).

[3]EEOC Guidelines on Employee Selection Procedures, Code of Federal Regulations, Title 29, Chapter XIV, Part 1607.

RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN

Under Title VII, pre-employment inquiries concerning race, color, religion, sex or national origin are not considered violations of the law in and of themselves. However, inquiries which either directly or indirectly disclose such information, unless otherwise explained, may constitute evidence of discrimination prohibited by Title VII.

Some state fair employment practice laws expressly prohibit inquiries on employment applications concerning the applicant's race, color, religion, sex or national origin. In some states it may also be considered illegal to seek related data (e.g. former name, past residence, names of relatives, place of birth, citizenship, education, organizational activities, photographs, and color of eyes and hair) which could indirectly reveal similar information.

Denial of equal opportunity to individuals because of marriage to or association with persons of a specific national, ethnic or racial origin, or because of attendance at schools or churches, or membership in organizations identified with particular racial or ethnic groups, is considered a violation of Title VII.[4]

An employer may justifiably and legitimately seek and obtain information needed for implementation of affirmative action programs, court-ordered or other government reporting or record keeping requirements, and for studies to identify and resolve possible problems in the recruitment and testing of members of minority groups and/or women to insure equal employment for all persons.

However, the employer must be able to demonstrate that such data were collected for legitimate business purposes. Such information should be kept separate from the regular permanent employee records to insure that it is not used to discriminate in making personnel decisions.

[4]EEOC Guidelines on Discrimination Because of National Origin, Code of Federal Regulations, Title 29, Chapter XIV, Part 1606; EEOC Decision No. 71-969 (1970).

HEIGHT AND WEIGHT

EEOC and the Courts have ruled minimum height and weight requirements to be illegal if they screen out a disproportionate number of minority group individuals (e.g. Spanish-surnamed or Asian Americans) or women, and the employer cannot show that these standards are essential to the safe performance of the job in question.[5]

MARITAL STATUS, NUMBER OF CHILDREN AND PROVISION FOR CHILD CARE

Questions about marital status, pregnancy, future child-bearing plans, and number and age of children are frequently used to discriminate against women and may be a violation of Title VII if used to deny or limit employment opportunities for female applicants. Employers are cautioned against use of such non-job-related questions. Information needed for tax, insurance or Social Security purposes may be obtained after employment.*

It is a violation of Title VII for employers to require pre-employment information about child-care arrangements from female applicants only. The U.S. Supreme Court has ruled that an employer may not have different hiring policies for men and women with pre-school children.[6]

EDUCATIONAL REQUIREMENTS

The U.S. Supreme Court has found an employer's requirement of a high school education discriminatory where statistics showed such a requirement operated to disqualify blacks at a substantially higher rate than whites and there was no evidence that the requirement was significantly related to successful job performance. This standard applies to all groups protected under Title VII and is relevant to all questions relating to educational attainment, where no direct job-related requirement or business necessity can be proven.[7]

[5] *Castro v. Beecher*, 459 F. 2d 725 (C.A. 1, 1972).

*See section on "Data Required for Legitimate Business Purposes."

[6] *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971).

[7] *Griggs v. Duke Power Co.*, supra.

ENGLISH LANGUAGE SKILL

Testing or scoring an individual in English language proficiency when English language skill is not a requirement of the work to be performed obviously has a disparate effect upon certain minority groups and is a violation of Title VII.[8]

FRIENDS OR RELATIVES WORKING FOR THE EMPLOYER

Information about friends or relatives working for an employer is not relevant to an applicant's competence. Requesting such information may be unlawful if it indicates a preference for friends or relatives of present employees and the composition of the present workforce is such that this preference would reduce or eliminate opportunities for women or minority group members.[9] However, a "nepotism" policy which prohibits or limits employment opportunity of a spouse or other relative may also be illegal if it has an adverse impact on job opportunities for either women or men as a group.

ARREST RECORDS

Because members of some minority groups are arrested substantially more often than whites in proportion to their numbers in the population, making personnel decisions on the basis of arrest records involving no subsequent convictions has a disproportionate effect on the employment opportunities of members of these groups. The Courts and the Commission accordingly have held that without proof of business necessity an employer's use of arrest records to disqualify job applicants is unlawful discrimination.[10] EEOC has ruled that even if an employer does not consider arrest information, the mere request for such information tends to discourage minority applicants and is therefore illegal.

CONVICTION RECORDS

Federal Courts have held that a conviction for a felony or misdemeanor may not by itself lawfully constitute an absolute bar to employment, but that an employer may give fair consideration to the relationship between a conviction and the applicant's fitness for a particular job.[11] These decisions indicate that conviction records should be cause for rejection only if their number, nature and recentness would cause the applicant to be unsuitable for the position. If such inquiries are made, they should be accompanied by a statement that a conviction record will not necessarily be a bar to employment, and that factors such as age and time of the offense, seriousness and nature of the violation, and rehabilitation will be taken into account.

[8] EEOC Guidelines on Discrimination Because of National Origin, supra.

[9] *Vogler v. McCarty, Inc.*, 407 F. 2d 1047 (C.A. 5, 1969); *Lea v. Cone Mills Corp.*, 438 F. 2d 86 (C.A. 4, 1971); Aff'g 301 F. Supp. 97 (D.C. N.C., 1969).

[10] *Carter v. Gallagher*, 452 F. 2d 315 (C.A. 8, 1971); *Gregory v. Litton*, 472 F. 2d 631 (C.A. 9, 1972).

[11] *Carter v. Gallagher*, supra; *Green v. Missouri Pacific R.R. Co.*, 523 F. 2d 1290 (C.A. 8, 1975).

DISCHARGE FROM MILITARY SERVICE

Employers should not, as a matter of policy, reject applicants with less than honorable discharges from military service. According to a Department of Defense study, minority service members receive a higher proportion of general and undesirable discharges than non-minority members of similar aptitude and education.

Thus, an employer's requirement that to be eligible for employment, ex-members of the armed services must have been honorably discharged has a disparate effect upon minorities and may be a violation of Title VII.[12]

[12]EEOC Decision No. 74-25 (1973).

One Federal District Court has held that an employer may inquire into an applicant's military service record if information regarding discharge status is used not in making a hiring decision but in deciding whether further investigations should be made into the applicant's background and qualifications. If further inquiry reveals non-discriminatory grounds for denying employment, the employer may then refuse to hire the applicant.[13]

Since a request for this information may discourage minority workers from applying and therefore be grounds for a discrimination charge, employers should avoid such questions unless "business necessity" can be shown. As in the case of conviction records discussed above, questions regarding military service should be accompanied by a statement that a dishonorable or general discharge is not an absolute bar to employment and that other factors will affect a final decision to hire or not to hire.

AGE

The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are between 40 and 65 years of age. The Wage and Hour Division of the United States Department of Labor, which administers the Act, says, ". . . because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment application forms which request such information . . . will be closely scrutinized to

[13]*Lewis v. Western Airlines*, 379 F. Supp. 684, (D.C. ND Cal., 1974); Partial summary denied 9 EPD 10, 151 (D.C. ND Cal., 1975).

assure that the request is for a permissible purpose and not for purposes proscribed by the statute."* For further information on age discrimination, contact:

Employment Standards Administration
Wage and Hour Division
U.S. Department of Labor
Washington, D.C. 20210

CITIZENSHIP

The EEOC *Guidelines on Discrimination Because of National Origin* indicate that consideration of an applicant's citizenship may constitute evidence of discrimination on the basis of national origin.

The law clearly protects all individuals, both citizens and non-citizens domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex or national origin.

Where consideration of citizenship has the purpose or effect of discriminating against persons of a particular national origin, a person who is a lawfully immigrated alien, legally eligible to work, may not be discriminated against on the basis of his/her citizenship, except in the interests of national security or determined under a United States Statute or Presidential Executive Order respecting the particular position or premises in question.

Where states have enacted laws prohibiting the employment of non-citizens, they are in conflict with and therefore are superceded by Title VII of the Civil Rights Act of 1964, as amended, if they have the purpose or effect of discriminating on the basis of national origin.[14]

The U.S. Supreme Court has found that a state civil service law which restricted state employment to U.S. citizens was unconstitutional and a denial of equal protection and benefit of the laws. A flat ban on employment of aliens without regard to the type of position or to the characteristics of the applicant involved was not justifiable on grounds of public interest.[15]

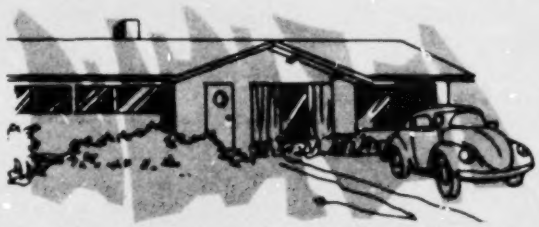
[14]EEOC Guidelines on Discrimination Because of National Origin, supra.

[15]*Sugarman* v. *Dougall*, 413 U.S. 634 (1973).

*See section on "Data Required for Legitimate Business Purposes."

ECONOMIC STATUS

Rejection of applicants because of poor credit ratings has a disparate impact on minority groups and hence has been found unlawful by the Commission, unless business necessity can be shown.



Inquiries as to an applicant's financial status, such as bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages, if utilized to make employment decisions, may likewise violate Title VII.[16]

AVAILABILITY FOR WORK ON WEEKENDS OR HOLIDAYS

While questions relating to availability for work on Friday evenings, Saturdays, Sundays or holidays are not automatically considered violations of the law, employers and unions have an obligation to accommodate the religious beliefs of employees and/or applicants, unless to do so would cause undue economic hardship. If such questions are asked, it is advisable to indicate that reasonable efforts will be made to accommodate employees' religious needs.[17]

DATA REQUIRED FOR LEGITIMATE BUSINESS PURPOSES

Data on such matters as marital status, number and age of children, and similar issues, which could be used in a discriminatory manner in making employment decisions but which are necessary for insurance, reporting requirements or other business purposes, can and should be obtained after a person has been employed, not by means of an application form or pre-employment interview.

[16]*Johnson* v. *Pike* Co., 332 F. Supp. 490 (C.D. Calif., 1971). EEOC Decision No. 74-02 (1973).

[17]EEOC Guidelines on Discrimination Because of Religion, Code of Federal Regulations Title 29, Chapter XIV, Part 1605.

• • • •

It is reasonable to assume that all questions on an application form or in a pre-employment interview are for some purpose and that selection or hiring decisions are made on the basis of the answers given. In an investigation of charges of discrimination, the burden of proof is on the employer to show that answers to all questions on application forms or in oral interviews are not used in making hiring and placement decisions in a discriminatory manner prohibited by the law.

To seek information other than that which is essential to effectively evaluate a person's qualifications for employment is to make oneself vulnerable to charges of discrimination and consequent legal proceedings.

It is therefore in a employer's own self-interest to carefully review all procedures used in screening applicants for employment, eliminating or altering any not justified by business necessity.

Assistance in planning equal employment programs or further information may be obtained by contacting the appropriate EEOC Regional Office or:

Educational Programs Branch
U.S. Equal Employment Opportunity Commission
2401 E Street, N.W., Room 4295
Washington, D.C. 20506

• • • •

This pamphlet reflects equal employment opportunity law at the time of its publication. As the law is continually evolving through court and EEOC decisions, persons needing legal advice should consult an attorney.

EEOC REGIONAL OFFICES

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APPENDIX IX.

COMMENTS ON THE MODEL BY HEW REGIONAL OFFICES

CASC

THE COUNCIL FOR THE ADVANCEMENT OF SMALL COLLEGES
ONE DUPONT CIRCLE • WASHINGTON, D. C. 20036 • (202) 659-3795

LETTER SENT TO REGIONS

FOR APPROVAL OF PLAN

June 30, 1976

Mr. Taylor D. August
Regional Director, Office of
Civil Rights
12 Grand Building
12th and Grand Avenue
Kansas City, Missouri 64106

Dear Mr. August:

The Council for the Advancement of Small Colleges, an organization whose purpose is communicated by its name, has initiated the development of a model "Affirmative Action" Plan for the use of its member colleges (small colleges generally 2,000 and under). The Council has members within your region.

The Council's model was put together by a member college in Region Ten, where, as you know, Ms. Marlaina Kiner, is your counterpart. The enclosed model has been approved by Region Ten.

My purpose in writing is to seek your determination as to whether the Region Ten model would be an acceptable model for Region Seven. The Council is aware that any model is only that, and that each college using the model must perhaps modify such so as to fit specific institutional needs. It would be helpful, nonetheless, to have your determination as to whether the approved Region Ten "model" could serve as an approved model.

I look forward to your helpful and timely reply.

Sincerely,

Gerrit J. TenBrink
Vice President

GJT: nwb
Enclosure

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION X
ARCADE PLAZA BUILDING
1321 SECOND AVENUE M.S. 508
SEATTLE, WASHINGTON 98101

(206) 442-0852

OFFICE OF THE REGIONAL DIRECTOR
Office for Civil Rights

April 13, 1976

Eugene B. Habecker, J.D.
Dean of Students
George Fox College
Newberg, Washington 97132

Dear Dr. Habecker:

The initiative taken by the Council for the Advancement of Small Colleges in developing a model Equal Employment Opportunity Action Plan for the use of its member colleges is most appropriate and commendable. I am pleased that the Office for Civil Rights has had an opportunity to work with you in this undertaking.

The staff members of our Higher Education Branch, who have reviewed the Plan, have reported to me that the Plan appears to be consistent with Federal equal opportunity laws and regulations, including Executive Order 11246, as amended, and Revised Order 4 of the Office of Federal Contract Compliance Programs (41 CFR 60-2).

The model format you have developed appears to be an effective adaptation to the setting and purposes of the smaller colleges, whether or not they may hold Federal contracts covered by the Executive Order requiring an affirmative action plan. Such a model is consistent with the intent of the voluntary affirmative action clause of HEW regulations implementing Title VI of the Civil Rights Act of 1964 (45 CFR 80.3 (b)(6)(ii)). It also provides a suitable format for conducting a "Title IX" self-evaluation of employment practices as required of all educational institutions receiving any Federal assistance (45 CFR 86.3). Other models may be used in evaluating student services under Title IX.

Let me add one word of caution, however; a plan is only as effective as its implementation. In assessing an institution's compliance with Federal equal opportunity requirements, the Office for Civil Rights will consider all aspects of a plan's application to the particular institutional context.

Again, it has been a pleasure working with you.

Sincerely,

Marlaina Kiner

Marlaina Kiner
Director
Office for Civil Rights
Region X

Enclosures

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION IV
50 7TH STREET N.E.
ATLANTA, GEORGIA 30323

OFFICE OF THE
REGIONAL DIRECTOR

August 5, 1976

Mr. Gerrit J. TenBrink
Vice-President
The Council for the Advancement of
Small Colleges
One Dupont Circle
Washington, DC 20036

Dear Mr. TenBrink:

This office has reviewed and evaluated the Model Affirmative Action Plan developed by the Council and it appears to be consistent with existing Federal equal opportunity laws and regulations.

The Council is to be commended for its initiative in developing such a model and this office would like to make the following comments on two aspects of Affirmative Action for your consideration:

Grievance Mechanism: While the informal grievance procedure appears adequate, the formal process does not provide adequate complainant involvement/representation, which is one of the main reasons why complainants have a tendency to circumvent internal grivance mechanisms and file complaints with the Federal government. While there is no required format, this office has developed a system which it feels will provide integrity, objectivity, administrative control, and "affected-parties" involvement. If interested, this office is willing to provide the details upon request.

Problem Identification: It is suggested that the model include a recommendation for institutions to do an in-depth analysis utilizing workforce and other data to determine what effect the institution's policies, procedures, and practices have had on minorities and females. The areas requiring analysis should include at least the following:

A) The Hiring Process - Applicant Flow, Recruiting, Testing, Hiring and Placement

B) Conditions of Employment - Salary and Compensation, Fringe Benefits, Workload, Leave, Part-time Employment, "Hard and Soft" money positions

C) Opportunities for Advancement - Training, Transfer, Promotions, and Assignments

D) Job Security - Tenure, Seniority, and Terminations (voluntary and involuntary)

Where problem areas do exist, the institution should develop the following outline in its plan:

1. Identify the problem in brief narrative form

2. Outline what remedial or corrective action will be taken

3. Identify the University official responsible for implementation

4. Cite the target date which will include both the beginning and expected completion date.

If this office can be of any further assistance, please do not hesitate to call or write.

Sincerely yours,

William H. Thomas, Director
Office for Civil Rights (Region IV)

PROPOSED GRIEVANCE MECHANISM FOR COMPLAINTS OF DISCRIMINATION

Introduction:

Under the provisions of Title IX of the Education Amendments of 1972 (86.8(a)), all institutions of higher education, receiving federal funding, shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging sex discrimination. Although both Title VI of the Civil Rights Act of 1964 (nondiscrimination in student affairs/employment) and Executive Order 11246 (prohibits discrimination in employment by federal contractors) do not legally require a grievance mechanism, the Title IX mandate provides the stimulus. Collectively, these federal laws and regulations, frequently with overlapping jurisdiction, prohibit discrimination in employment and student services on the basis of race, color, religion, national origin, and sex. Therefore, it is conceivable that one unitary grievance procedure could be developed to deal with complaints of discrimination on any of the prohibited bases.

The establishment of a sound grievance mechanism specifically designed to deal with complaints of discrimination (employment and student affairs) has a three-fold purpose: (1) it minimizes, and in some instances negate, federal involvement; (2) it provides for a more expeditious resolution of the grievance; and (3) it maintains the integrity of the institution's internal system.

Although complainants are not required by federal mandate to initially utilize the institution's grievance mechanism, it is felt that aggrieved individuals will more likely utilize an internal mechanism that assures objectivity, integrity and expediency.

Although there is no required grievance format, this Office has developed a proposed mechanism based on the sum total of its collective experiences in the area of civil rights enforcement.

SUGGESTED GRIEVANCE MECHANISM

It is recommended that the proposed mechanism be an objective administrative procedure involving two processes: (1) informal and (2) formal.

Informal:

In the event that an individual felt that he/she received discriminatory treatment and could not resolve the issue within his/her internal structure, the individual should contact the Affirmative Action/Equal Opportunity Officer within fifteen (15) days after the alleged discriminatory act or incident. Discretion may be exercised in the event that the AA/EO Officer is contacted after the fifteen (15) day period.

During this stage in the procedure, the complaining party is designated the aggrieved individual and the individual or individuals whom the aggrieved individual is complaining against should be designated the alleged discriminating party.

It should be noted that the role of the AA/EO Officer is not to serve as an adversary for either the aggrieved individual or the alleged discriminating party, but merely to internalize the allegation(s) and attempt to informally resolve the differences between the two parties within fifteen (15) days after being contacted by the aggrieved individual.

If the aggrieved individual is not satisfied with the outcome of the informal process, he may file a formal complaint within fifteen (15) days after the conclusion of the attempt to informally resolve the differences.

As indicated above, the informal process, theoretically, should not exceed forty-five (45) days.

Formal:

A. Initial Process

The aggrieved individual initiates the formal procedure by filing a formal complaint in writing to the Affirmative Action/Equal Opportunity Officer. Once the complaint is filed, the status of the aggrieved individual changes to that of complainant. It should be noted that the AA/EO Officer may assist the complainant in properly filing a complaint; however, it is important that the AA/EO Officer be totally objective and not serve as an advocate for the complainant. The formal complaint should include the following:

a. Name and position of the complainant

b. Name and position of the alleged discriminating party

c. Type or form of discrimination (sex, race, religion, national origin, color, etc.)

d. Description of the acts considered to be discriminatory, including dates.

B. Hearing Panel

Once the complaint has been properly filed, the Chief Administrative Officer of the University should convene a Hearing Panel within fifteen (15) days for the following purposes: (1) to identify the issues in the case; (2) interview the complainant, alleged discriminating party, and witnesses; (3) obtain, review, and analyze all records, documents, etc. relevant to the case; (4) develop a documented report of findings; and submit a written recommendation to the Chief Administrative Officer.

The AA/EO Officer should serve as an Ex-Officio member of the Hearing Panel providing technical assistance as deemed necessary by the Panel members. The Hearing Panel should have a maximum of thirty (30) days to deliberate and present its findings and recommendations.

C. Panel Selection

The Hearing Panel should be an odd number panel (3,5, or 7) selected from a predesignated pool of individuals (i.e., 40, 50, 100 people) who may be appointed, selected, elected or a combination of the three. This panel should reflect all elements of the university community (faculty, staff, and students) and include minority and female representation.

In order to assure balance and equity, both the complainant and alleged discriminating party will select the members of the Hearing Panel from the predesignated pool. Both the complainant and alleged discriminating party will each select an even number of panelists and will mutually select the odd panelist who may also serve as chairman of the Panel.

D. Final Disposition

The Hearing Panel only has recommendation authority. The Chief Administrative Officer will make the final decision in all cases upon receipt of the Panel's report. He should notify all affected parties of his decision within a reasonable period of time and initiate whatever action he deems necessary.

This formal process does not preclude an individual's right to filing a formal complaint with the Office for Civil Rights, United States Department of Health, Education, and Welfare or any other Federal agency.

James R. Lemon
Equal Opportunity Specialist
DHEW, Region IV
September 1976